

**ONTARIO  
LABOUR RELATIONS BOARD  
REPORTS**

**March/April 2011**



Ontario

## ONTARIO LABOUR RELATIONS BOARD

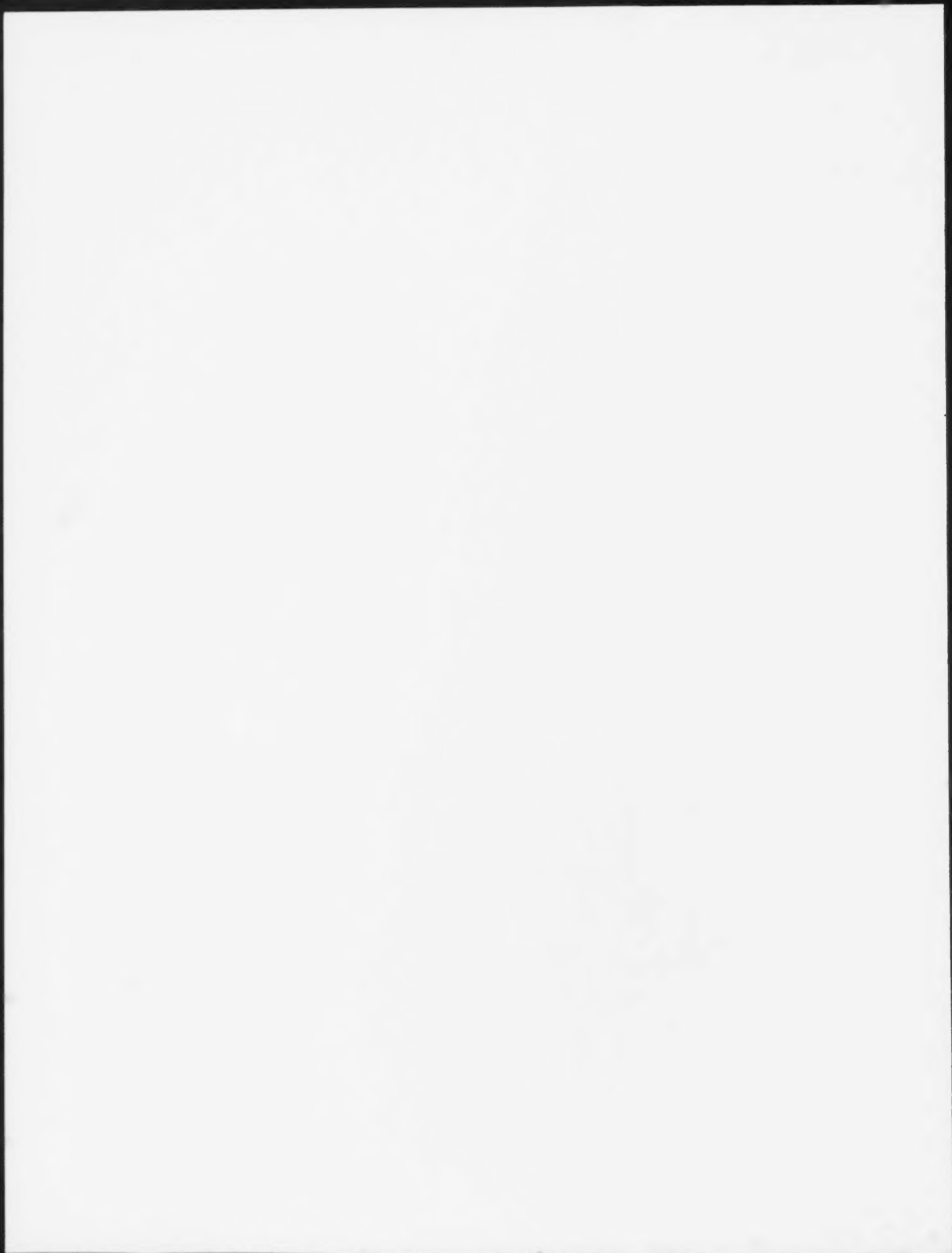
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# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**A Bimonthly Series of Decisions from the  
Ontario Labour Relations Board**

**Cited [2011] OLRB REP.MARCH/APRIL**

**EDITORS: VOY STELMASZYNSKI  
LEONARD MARVY**

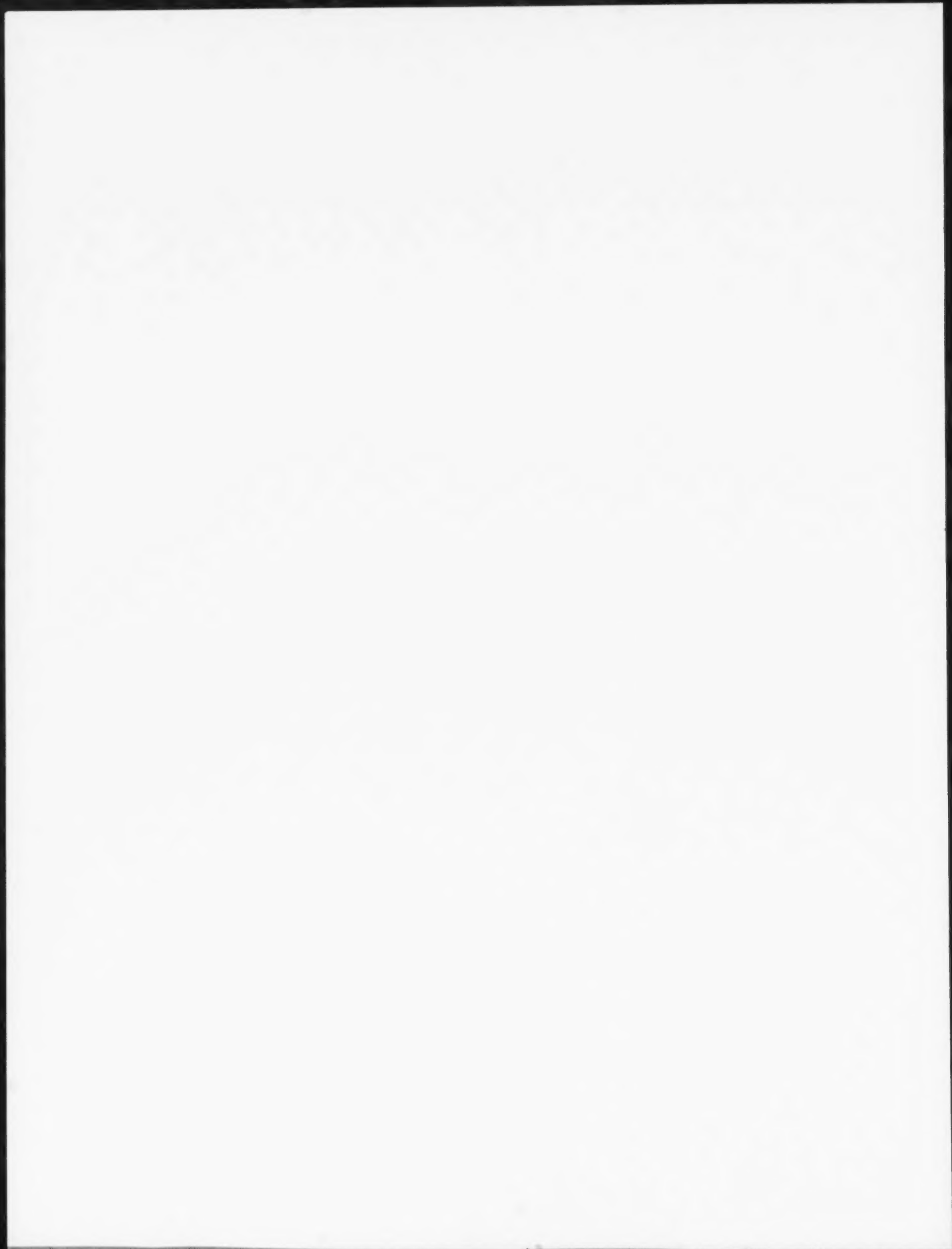


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there is a dispute about which trade the employee was working on that date – The Board found that the non-construction work performed by the employees in dispute was covered by separate and distinct provisions of the Act, and that in this particular circumstance there was no more reason to have regard to what the employees in dispute did when they left the construction job site to do non-construction work than there would be in the case of employees who were sent home – The Board found the individuals to be employees in the bargaining unit – Matter continues

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Construction Industry Grievance – Judicial Review – The Board had decided that OPG, although not the direct employer, was exercising power in respect of the grievor's employment when it banned him from its sites, that its actions came within the scope of the EPSCA Agreement, and that it had to establish that those actions met the standard of the Agreement (see [2010] OLRB Rep. March/April 298) – The Court found this was a preliminary ruling on the arbitrability of the grievance, noted that the Court does not generally entertain judicial review of a preliminary ruling while a proceeding is pending before a tribunal and was not persuaded there were any exceptional circumstances to deviate from that in this case – Application was quashed as premature

ONTARIO POWER GENERATION INC.; RE UNITED ASSOCIATION OF  
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Construction Industry – Certification – Trade Union – After finding that the Restoration Council of Ontario (RCO) was a council of trade unions within the meaning of sections 1(1) and 126(1) of the Act, the Board addressed the issue of whether a council of trade unions could have individuals as members – The Board first noted that although the Act defines a trade union as an organization of employees, the case law does not require that it must be an organization of only employees, and that the same reasoning ought to be applied when determining whether an organization is a council of trade unions – The Board went on to find that a council of trade unions once certified is a “trade union” within the meaning of the Act, and that together with s. 12(3) contemplates the possibility of a certified council of trade unions having individuals as members – Finally, if an organization of employees can be a trade union, and an organization of trade unions, once certified, can be a trade union, then surely one entity that encompasses both employees and unions can also be a trade union – Certification granted

A.A.F. CONSTRUCTION; RE THE RESTORATION COUNCIL OF ONTARIO .....

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Construction Industry – Discharge – Unfair Labour Practice – The Union brought an application alleging that the discharge of three individuals on the date of application for certification contravened sections 72 and 76 of the Act as it was motivated, at least in part, by anti-union animus – Parkview took the position that one of the employees had been properly terminated at the end of his three month probationary period because he had difficulties performing some of the tasks equipment operators are required to perform – Parkview also presented evidence regarding its financial difficulties – Once the operations manager decided he would lay off two construction labourers in order to meet the need to reduce costs, he decided to terminate them the same day as the third individual, as he believed this would have less impact on the morale and productivity of the remaining workers – The applicant claimed that the operations manager’s explanations were not credible, considering that there was no probationary period in place, and that the cost savings achieved were minimal compared to the financial difficulties the company faced – Furthermore, the employees were, contrary to past practice, laid off mid-week rather than at the end of the week – Finally, the operations manager was aware that an organizing campaign was underway and that the applicant had met with the excavating crew the day before the termination took place – The Board determined that Parkview had met the burden of proof to demonstrate that its decision to terminate the employees in question was not contrary to the Act – While the timing of the termination is very suspicious, there was no evidence of anti-union behaviour or that Parkview had reacted to the organizing efforts of the applicant in any illegitimate way – Given the operations manager’s uncontradicted testimony and the failure to cross-examine him on this point, the Board refused to draw the inference that because the operations manager was aware that there had been a union meeting the day before the terminations, he knew the employees had signed cards during the meeting – Parkview’s evidence was complete, consistent and credible, and was not contradicted by the applicant – Finally, Parkview would have had no basis for knowing or even suspecting that the applicant was filing the application for certification the day the dismissals took place – That decision had been made by the applicant’s co-ordinators the evening before and they had not informed any Parkview employee – Application dismissed

PARKVIEW HOMES, 149282 ONTARIO INC. AND 1490623 ONTARIO INC.,  
 PARKVIEW EXCAVATION SERVICES INC.; RE UNIVERSAL WORKERS UNION,  
 LIUNA LOCAL 183 .....

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Duty of Fair Representation – *Colleges Collective Bargaining Act* – Practice and Procedure – The applicant, an employee of the Colleges, made an application under the *Labour Relations Act* asserting that OPSEU had violated s. 74 – OPSEU and the College submitted that the Board had no jurisdiction to hear the complaint since it was filed under the LRA, rather than the CCBA – Pursuant to Rule 40.5 the Board found it advisable to allow the filing to be amended – There was no purpose in dismissing the application: although it was filed on the wrong form, the obligation on the union is the same and the substance of the complaint would have been the same – Furthermore were the complaint dismissed, the applicant could just file again on the proper form and while the time period lapse would be significant, OPSEU and the College could not point to any prejudice, since they would have known the substance of the complaint – Additionally, notwithstanding a long delay (46 months), the Board found the length of the administrative delay and the resulting waning of memories was not the fault of the Board, rather it was a joint effort of the applicant, the College, the union and the Board – The

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Employer – Health and Safety – Reprisal – The applicant alleged that the responding parties violated s. 50 of the OHSA when he was removed as a security guard at Humber College and dismissed from employment by Primary Response – The applicant contended that the closer monitoring he was placed under after he contacted the Ministry of Labour to complain about violations of the Act was a reprisal – Humber moved to have the application dismissed against it on the grounds that it was neither the employer of the applicant, nor a person acting on behalf of an employer – The Board was satisfied that Humber was a third party to the employment relationship – The applicant failed to provide evidence that Humber was acting on behalf of Primary Response when Humber's employee began monitoring the applicant, or when Humber allegedly advised Primary that it wanted the applicant removed from its facility – Before a person who is neither the nominal nor the actual employer can be subject to this kind of reprisal complaint, the person must have the authority to punish the employee or, at least, affect the individual's employment – Motion by Humber allowed – Matter continues

PRIMARY RESPONSE INC.; HUMBER COLLEGE INSTITUTE OF ADVANCED  
LEARNING AND TECHNOLOGY; RE GERARD F. DUNPHY .....

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Evidence – Practice and Procedure – Termination – Unfair Labour Practice – The employer sought production of notes, which was resisted by the union on the basis of litigation privilege and confidential relationship privilege, taken by a union representative during a meeting, shortly after Dennee (an individual dismissed by the employer) had a discussion with the employer's principal, Scott – Dennee alleged that Scott told him he could get his job back if he could arrange to get all his friends to vote against the union and Scott denied ever asking Dennee to exercise his influence over the other employees – There was no dispute that the notes could constitute cogent and relevant evidence concerning the issues in dispute – On a review of the principles underlying confidential relationship privilege the Board found the key feature was that the communication occur in the context of an employee seeking advice from a union representative concerning an issue to which the union is obligated to give serious consideration – While the meeting between Dennee and the union representatives may have involved a discussion of his dismissal and the possibility of a grievance, the employer was not interested in this information and any references to it may be redacted from the notes – Another possible purpose of the meeting may have been to describe what just occurred in Dennee's discussion with Scott – Given that there was no evidence suggesting that Dennee was seeking advice from the union about how his conversation with Scott might assist him in his termination application (or any grievance), the Board could not see how a confidential relationship privilege existed – The Board found no connection between Dennee's dismissal and the application for termination, as they were fundamentally not the same litigation, and accordingly whatever litigation privilege may have existed did not extend to the application for termination of bargaining rights – As neither privilege attached, given the cogency and relevance of the notes, the Board ordered production – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247;  
ONTARIO PROVINCIAL DISTRICT COUNCIL; RE DEBBIE GIBSON .....

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Health and Safety – Employer – Reprisal – The applicant alleged that the responding parties violated s. 50 of the OHSA when he was removed as a security guard at Humber College and dismissed from employment by Primary Response – The applicant contended that the closer monitoring he was placed under after he contacted the Ministry of Labour to complain about violations of the Act was a reprisal – Humber moved to have the application dismissed against it on the grounds that it was neither the employer of the

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PRIMARY RESPONSE INC.; HUMBER COLLEGE INSTITUTE OF ADVANCED  
LEARNING AND TECHNOLOGY; RE GERARD F. DUNPHY;.....

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Interim Relief – Certification – Unfair Labour Practice – The Board held a consultation into the discharge of one employee during an organizing drive – In its analysis of the relevant criteria, the Board determined that the employer's rationale for dismissing the employee six weeks after the alleged incident giving rise to the discipline was too remote and unpersuasive – More significantly, the Board looked at the irreparable harm to the union, and the expressed fears of employees who would have to testify in the unfair labour practice complaint – If the conclusions reached by the employees regarding links between the campaign and the employee's discharge are not corrected, growing erosion of union support may not be stemmed – Reinstatement ordered

AUTHENTECH COMMUNICATIONS CANADA INC.; RE LIUNA, ONTARIO  
PROVINCIAL DISTRICT COUNCIL .....

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Intervenor – Judicial Review – Standing – Two intervenors brought motions for standing on a judicial review application brought by Blue Mountain to challenge the Board's interpretation of "person" in s. 51(1) of OHSA – The Board found that "person" was not restricted to "worker" – Conservation Ontario argued the Board's interpretation could pose a direct and significant risk to its day-to-day operations – The Association of Chiefs of Police suggested that the Board's view, if upheld, will negatively affect the cost of providing police services throughout Ontario – The Motions Judge ruled that Conservation Ontario will provide a broader context from which the court can evaluate the purpose of the legislation and interpret the impugned provision, but the Chiefs of Police were attempting to introduce a new ground for review of the Board's decision that will unnecessarily delay the application for judicial review – Orders accordingly

BLUE MOUNTAIN RESORTS LIMITED; RE RICHARD DEN BOK, THE  
MINISTRY OF LABOUR AND THE OLRB.....

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Judicial Review – Intervenor – Standing – Two intervenors brought motions for standing on a judicial review application brought by Blue Mountain to challenge the Board's interpretation of "person" in s. 51(1) of OHSA – The Board found that "person" was not restricted to "worker" – Conservation Ontario argued the Board's interpretation could pose a direct and significant risk to its day-to-day operations – The Association of Chiefs of Police suggested that the Board's view, if upheld, will negatively affect the cost of providing police services throughout Ontario – The Motions Judge ruled that Conservation Ontario will provide a broader context from which the court can evaluate the purpose of the legislation and interpret the impugned provision, but the Chiefs of Police were attempting to introduce a new ground for review of the Board's decision that will unnecessarily delay the application for judicial review – Orders accordingly

BLUE MOUNTAIN RESORTS LIMITED; RE RICHARD DEN BOK, THE  
MINISTRY OF LABOUR AND THE OLRB; .....

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Judicial Review – Construction Industry Grievance – The Board had decided that OPG, although not the direct employer, was exercising power in respect of the grievor's employment when it banned him from its sites, that its actions came within the scope of the EPSCA Agreement, and that it had to establish that those actions met the standard of the Agreement (see [2010] OLRB Rep. March/April 298) – The Court found this was a preliminary ruling on the arbitrability of the grievance, noted that the Court does not generally entertain judicial review of a preliminary ruling while a proceeding is pending before a tribunal and was not persuaded there were any exceptional circumstances to deviate from that in this case – Application was quashed as premature

ONTARIO POWER GENERATION INC.; RE UNITED ASSOCIATION OF  
JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING  
INDUSTRY OF THE UNITED STATES AND CANADA .....

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Practice and Procedure – Certification – Construction Industry – Related Employer – Unfair Labour Practice – IBEW applied for certification with six cards naming ABC as the responding party – After receiving the response by ABC stating it had no employees, IBEW sought leave to amend its application to change the name of the responding party to ABC Electric – The union filed a second application naming ABC and/or ABC Electric as the responding party – ABC Electric filed a list of six names in its response to both applications – After the Regional Certification Meeting the union requested that the Board issue an interim certificate (pending the resolution of other issues), which the responding parties objected to – Given that each possible outcome of the first and second application could lead to ABC Electric being certified, the Board examined whether it should exercise its discretion to issue an interim certificate – First, the Board decided that even if the first application was dismissed, any bar imposed would not be against ABC Electric; second the Board had no concerns with the two sets of membership cards supplied by the applicant; and finally, the obligation to conclude a collective agreement which flows from the interim certificate does not provide a valid reason for the Board to refuse to exercise its discretion – Interim Certificate Issued – Matter continues

1168768 ONTARIO INC. C.O.B. AS ABC PLUMBING HEATING & ELECTRICAL;  
RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL  
586; RE 1702786 ONTARIO INC. ....

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Practice and Procedure – *Colleges Collective Bargaining Act* – Duty of Fair Representation – The applicant, an employee of the Colleges, made an application under the *Labour Relations Act* asserting that OPSEU had violated s. 74 – OPSEU and the College submitted that the Board had no jurisdiction to hear the complaint since it was filed under the LRA, rather than the CCBA – Pursuant to Rule 40.5 the Board found it advisable to allow the filing to be amended – There was no purpose in dismissing the application: although it was filed on the wrong form, the obligation on the union is the same and the substance of the complaint would have been the same – Furthermore were the complaint dismissed, the applicant could just file again on the proper form and while the time period lapse would be significant, OPSEU and the College could not point to any prejudice, since they would have known the substance of the complaint – Additionally, notwithstanding a long delay (46 months), the Board found the length of the administrative delay and the resulting waning of memories was not the fault of the Board, rather it was a joint effort of the applicant, the College, the union and the Board – The Board noted that it was the College (not the responding party union) bringing the abuse

of process motion, and that it, like most responding parties to litigation, was almost certainly of the view that as long as the applicant was not interested in proceeding with the complaint, it was happy to let it languish – Quite simply, if the College wanted the application to proceed it could have simply written to the Board – Matter continues

CENTENNIAL COLLEGE OF APPLIED ARTS AND TECHNOLOGY; RE ADHIN SUKHU; ONTARIO PUBLIC SERVICE EMPLOYEES UNION.....

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Practice and Procedure – Evidence – Termination – Unfair Labour Practice – The employer sought production of notes, which was resisted by the union on the basis of litigation privilege and confidential relationship privilege, taken by a union representative during a meeting, shortly after Dennee (an individual dismissed by the employer) had a discussion with the employer's principal, Scott – Dennee alleged that Scott told him he could get his job back if he could arrange to get all his friends to vote against the union and Scott denied ever asking Dennee to exercise his influence over the other employees – There was no dispute that the notes could constitute cogent and relevant evidence concerning the issues in dispute – On a review of the principles underlying confidential relationship privilege the Board found the key feature was that the communication occur in the context of an employee seeking advice from a union representative concerning an issue to which the union is obligated to give serious consideration – While the meeting between Dennee and the union representatives may have involved a discussion of his dismissal and the possibility of a grievance, the employer was not interested in this information and any references to it may be redacted from the notes – Another possible purpose of the meeting may have been to describe what just occurred in Dennee's discussion with Scott – Given that there was no evidence suggesting that Dennee was seeking advice from the union about how his conversation with Scott might assist him in his termination application (or any grievance), the Board could not see how a confidential relationship privilege existed – The Board found no connection between Dennee's dismissal and the application for termination, as they were fundamentally not the same litigation, and accordingly whatever litigation privilege may have existed did not extend to the application for termination of bargaining rights – As neither privilege attached, given the cogency and relevance of the notes, the Board ordered production – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247; ONTARIO PROVINCIAL DISTRICT COUNCIL; RE DEBBIE GIBSON .....

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Related Employer – Certification – Construction Industry – Practice and Procedure – Unfair Labour Practice – IBEW applied for certification with six cards naming ABC as the responding party – After receiving the response by ABC stating it had no employees, IBEW sought leave to amend its application to change the name of the responding party to ABC Electric – The union filed a second application naming ABC and/or ABC Electric as the responding party – ABC Electric filed a list of six names in its response to both applications – After the Regional Certification Meeting the union requested that the Board issue an interim certificate (pending the resolution of other issues), which the responding parties objected to – Given that each possible outcome of the first and second application could lead to ABC Electric being certified, the Board examined whether it should exercise its discretion to issue an interim certificate – First, the Board decided that even if the first application was dismissed, any bar imposed would not be against ABC Electric; second the Board had no concerns with the two sets of membership cards supplied by the applicant; and finally, the obligation to conclude a collective agreement which flows from the interim certificate does not provide a valid reason for the Board to refuse to exercise its discretion – Interim Certificate Issued – Matter continues

1168768 ONTARIO INC. C.O.B. AS ABC PLUMBING HEATING & ELECTRICAL;  
RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL  
586; RE 1702786 ONTARIO INC. ....

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Reprisal – Employer – Health and Safety – The applicant alleged that the responding parties violated s. 50 of the OHSA when he was removed as a security guard at Humber College and dismissed from employment by Primary Response – The applicant contended that the closer monitoring he was placed under after he contacted the Ministry of Labour to complain about violations of the Act was a reprisal – Humber moved to have the application dismissed against it on the grounds that it was neither the employer of the applicant, nor a person acting on behalf of an employer – The Board was satisfied that Humber was a third party to the employment relationship – The applicant failed to provide evidence that Humber was acting on behalf of Primary Response when Humber's employee began monitoring the applicant, or when Humber allegedly advised Primary that it wanted the applicant removed from its facility – Before a person who is neither the nominal nor the actual employer can be subject to this kind of reprisal complaint, the person must have the authority to punish the employee or, at least, affect the individual's employment – Motion by Humber allowed – Matter continues

PRIMARY RESPONSE INC.; HUMBER COLLEGE INSTITUTE OF ADVANCED  
LEARNING AND TECHNOLOGY; RE GERARD F. DUNPHY .....

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Status – Certification – Construction Industry – Employee – On the application filing date the individuals at issue worked less than the majority of the day doing the work of a construction labourer, and the remainder of the day they performed non-construction work for the employer at different sites – The Board first noted that the *Gilvesy* test is used to determine which trade/bargaining unit a worker is in on the application date, if there is a dispute about which trade the employee was working on that date – The Board found that the non-construction work performed by the employees in dispute was covered by separate and distinct provisions of the Act, and that in this particular circumstance there was no more reason to have regard to what the employees in dispute did when they left the construction job site to do non-construction work than there would be in the case of employees who were sent home – The Board found the individuals to be employees in the bargaining unit – Matter continues

JAMWOOD DEVELOPMENTS INC.; CINELLI QUADRA GROUP LTD.; CINELLI,  
MARIO IN TRUST; CINTREX PROPERTY MANAGEMENT INC.; SURREY  
CONSTRUCTION INC.; A-MOTION ACCESSIBLE LIFESTYLE SOLUTIONS; A &  
M WOOD-WORKING; MAR JAM INVESTMENTS LTD. AND SURREY PLAZA  
LIMITED; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,  
ONTARIO PROVINCIAL DISTRICT COUNCIL.....

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Standing – Judicial Review – Intervenor – Two intervenors brought motions for standing on a judicial review application brought by Blue Mountain to challenge the Board's interpretation of "person" in s. 51(1) of OHSA – The Board found that "person" was not restricted to "worker" – Conservation Ontario argued the Board's interpretation could pose a direct and significant risk to its day-to-day operations – The Association of Chiefs of Police suggested that the Board's view, if upheld, will negatively affect the cost of providing police services throughout Ontario – The Motions Judge ruled that Conservation Ontario will provide a broader context from which the court can evaluate the purpose of the legislation and interpret the impugned provision, but the Chiefs of

Police were attempting to introduce a new ground for review of the Board's decision that will unnecessarily delay the application for judicial review – Orders accordingly

BLUE MOUNTAIN RESORTS LIMITED; RE RICHARD DEN BOK, THE  
MINISTRY OF LABOUR AND THE OLRB.....

264

Termination – Evidence – Practice and Procedure – Unfair Labour Practice – The employer sought production of notes, which was resisted by the union on the basis of litigation privilege and confidential relationship privilege, taken by a union representative during a meeting, shortly after Dennee (an individual dismissed by the employer) had a discussion with the employer's principal, Scott – Dennee alleged that Scott told him he could get his job back if he could arrange to get all his friends to vote against the union and Scott denied ever asking Dennee to exercise his influence over the other employees – There was no dispute that the notes could constitute cogent and relevant evidence concerning the issues in dispute – On a review of the principles underlying confidential relationship privilege the Board found the key feature was that the communication occur in the context of an employee seeking advice from a union representative concerning an issue to which the union is obligated to give serious consideration – While the meeting between Dennee and the union representatives may have involved a discussion of his dismissal and the possibility of a grievance, the employer was not interested in this information and any references to it may be redacted from the notes – Another possible purpose of the meeting may have been to describe what just occurred in Dennee's discussion with Scott – Given that there was no evidence suggesting that Dennee was seeking advice from the union about how his conversation with Scott might assist him in his termination application (or any grievance), the Board could not see how a confidential relationship privilege existed – The Board found no connection between Dennee's dismissal and the application for termination, as they were fundamentally not the same litigation, and accordingly whatever litigation privilege may have existed did not extend to the application for termination of bargaining rights – As neither privilege attached, given the cogency and relevance of the notes, the Board ordered production – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247;  
ONTARIO PROVINCIAL DISTRICT COUNCIL; RE DEBBIE GIBSON .....

232

Trade Union – Certification – Construction Industry – After finding that the Restoration Council of Ontario (RCO) was a council of trade unions within the meaning of sections 1(1) and 126(1) of the Act, the Board addressed the issue of whether a council of trade unions could have individuals as members – The Board first noted that although the Act defines a trade union as an organization of employees, the case law does not require that it must be an organization of only employees, and that the same reasoning ought to be applied when determining whether an organization is a council of trade unions – The Board went on to find that a council of trade unions once certified is a "trade union" within the meaning of the Act, and that together with s. 12(3) contemplates the possibility of a certified council of trade unions having individuals as members – Finally, if an organization of employees can be a trade union, and an organization of trade unions, once certified, can be a trade union, then surely one entity that encompasses both employees and unions can also be a trade union – Certification granted

A.A.F. CONSTRUCTION; RE THE RESTORATION COUNCIL OF ONTARIO .....

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Unfair Labour Practice – Certification – Construction Industry – Practice and Procedure – Related Employer – IBEW applied for certification with six cards naming ABC as the

responding party – After receiving the response by ABC stating it had no employees, IBEW sought leave to amend its application to change the name of the responding party to ABC Electric – The union filed a second application naming ABC and/or ABC Electric as the responding party – ABC Electric filed a list of six names in its response to both applications – After the Regional Certification Meeting the union requested that the Board issue an interim certificate (pending the resolution of other issues), which the responding parties objected to – Given that each possible outcome of the first and second application could lead to ABC Electric being certified, the Board examined whether it should exercise its discretion to issue an interim certificate – First, the Board decided that even if the first application was dismissed, any bar imposed would not be against ABC Electric; second the Board had no concerns with the two sets of membership cards supplied by the applicant; and finally, the obligation to conclude a collective agreement which flows from the interim certificate does not provide a valid reason for the Board to refuse to exercise its discretion – Interim Certificate Issued – Matter continues

1168768 ONTARIO INC. C.O.B. AS ABC PLUMBING HEATING & ELECTRICAL;  
RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL  
586; RE 1702786 ONTARIO INC. ....

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Unfair Labour Practice – Certification – Interim Relief – The Board held a consultation into the discharge of one employee during an organizing drive – In its analysis of the relevant criteria, the Board determined that the employer's rationale for dismissing the employee six weeks after the alleged incident giving rise to the discipline was too remote and unpersuasive – More significantly, the Board looked at the irreparable harm to the union, and the expressed fears of employees who would have to testify in the unfair labour practice complaint – If the conclusions reached by the employees regarding links between the campaign and the employee's discharge are not corrected, growing erosion of union support may not be stemmed – Reinstatement ordered

AUTHENTECH COMMUNICATIONS CANADA INC.; RE LIUNA, ONTARIO  
PROVINCIAL DISTRICT COUNCIL .....

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Unfair Labour Practice – Construction Industry – Discharge – The Union brought an application alleging that the discharge of three individuals on the date of application for certification contravened sections 72 and 76 of the Act as it was motivated, at least in part, by anti-union animus – Parkview took the position that one of the employees had been properly terminated at the end of his three month probationary period because he had difficulties performing some of the tasks equipment operators are required to perform – Parkview also presented evidence regarding its financial difficulties – Once the operations manager decided he would lay off two construction labourers in order to meet the need to reduce costs, he decided to terminate them the same day as the third individual, as he believed this would have less impact on the morale and productivity of the remaining workers – The applicant claimed that the operations manager's explanations were not credible, considering that there was no probationary period in place, and that the cost savings achieved were minimal compared to the financial difficulties the company faced – Furthermore, the employees were, contrary to past practice, laid off mid-week rather than at the end of the week – Finally, the operations manager was aware that an organizing campaign was underway and that the applicant had met with the excavating crew the day before the termination took place – The Board determined that Parkview had met the burden of proof to demonstrate that its decision to terminate the employees in question was not contrary to the Act – While the timing of the termination is very suspicious, there was no evidence of anti-union behaviour or that Parkview had reacted to the organizing efforts of the applicant in any illegitimate way – Given the operations

manager's uncontradicted testimony and the failure to cross-examine him on this point, the Board refused to draw the inference that because the operations manager was aware that there had been a union meeting the day before the terminations, he knew the employees had signed cards during the meeting – Parkview's evidence was complete, consistent and credible, and was not contradicted by the applicant – Finally, Parkview would have had no basis for knowing or even suspecting that the applicant was filing the application for certification the day the dismissals took place – That decision had been made by the applicant's co-ordinators the evening before and they had not informed any Parkview employee – Application dismissed

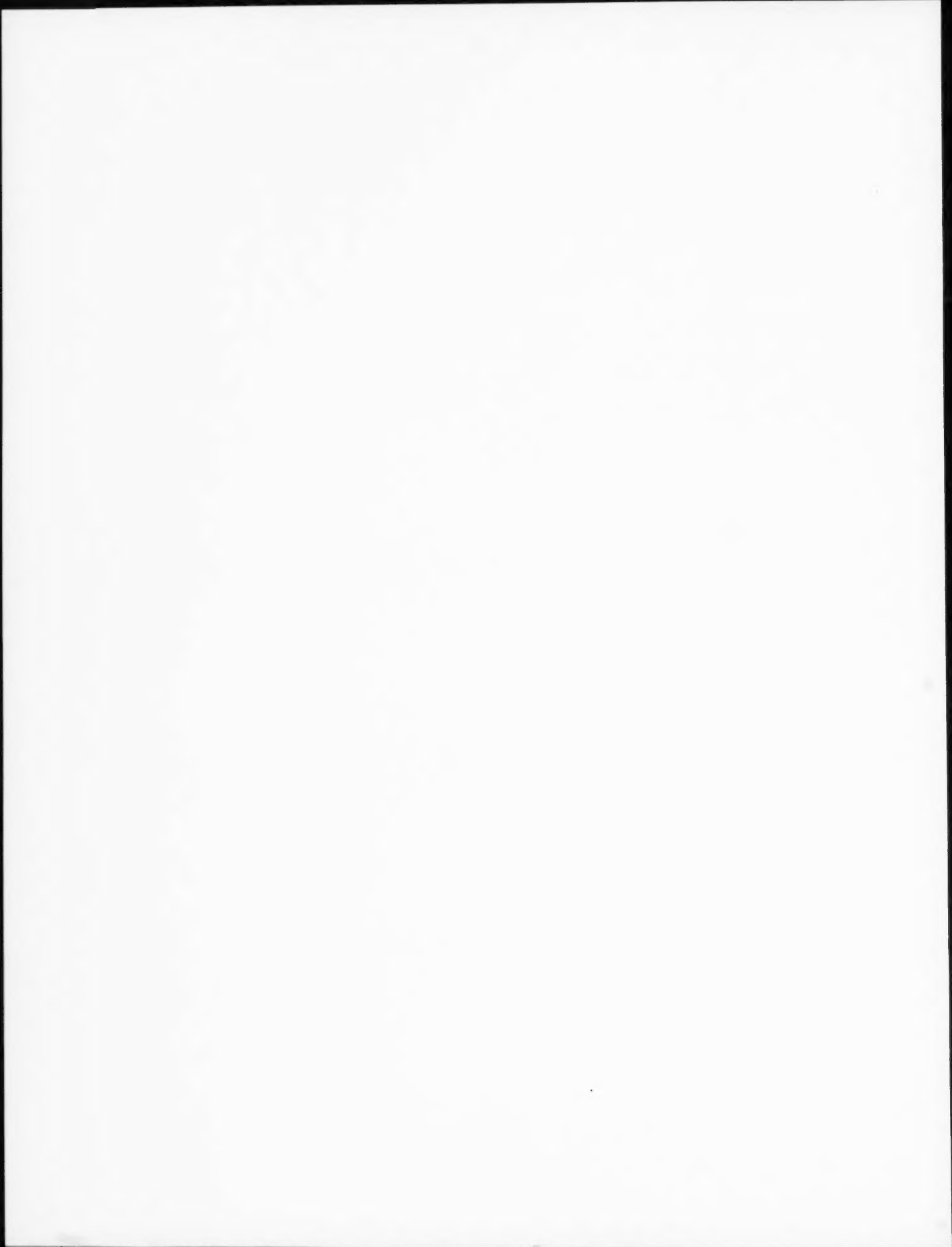
PARKVIEW HOMES, 149282 ONTARIO INC. AND 1490623 ONTARIO INC.,  
PARKVIEW EXCAVATION SERVICES INC.; RE UNIVERSAL WORKERS UNION,  
LIUNA LOCAL 183 .....

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Unfair Labour Practice – Termination – Evidence – Practice and Procedure – The employer sought production of notes, which was resisted by the union on the basis of litigation privilege and confidential relationship privilege, taken by a union representative during a meeting, shortly after Dennee (an individual dismissed by the employer) had a discussion with the employer's principal, Scott – Dennee alleged that Scott told him he could get his job back if he could arrange to get all his friends to vote against the union and Scott denied ever asking Dennee to exercise his influence over the other employees – There was no dispute that the notes could constitute cogent and relevant evidence concerning the issues in dispute – On a review of the principles underlying confidential relationship privilege the Board found the key feature was that the communication occur in the context of an employee seeking advice from a union representative concerning an issue to which the union is obligated to give serious consideration – While the meeting between Dennee and the union representatives may have involved a discussion of his dismissal and the possibility of a grievance, the employer was not interested in this information and any references to it may be redacted from the notes – Another possible purpose of the meeting may have been to describe what just occurred in Dennee's discussion with Scott – Given that there was no evidence suggesting that Dennee was seeking advice from the union about how his conversation with Scott might assist him in his termination application (or any grievance), the Board could not see how a confidential relationship privilege existed – The Board found no connection between Dennee's dismissal and the application for termination, as they were fundamentally not the same litigation, and accordingly whatever litigation privilege may have existed did not extend to the application for termination of bargaining rights – As neither privilege attached, given the cogency and relevance of the notes, the Board ordered production – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL  
247; ONTARIO PROVINCIAL DISTRICT COUNCIL; RE DEBBIE GIBSON .....

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**3811-10-R; 3930-10-R; 4154-10-R; 3907-10-U; 0041-11-U** International Brotherhood of Electrical Workers, Local 586, Applicant v. **1168768 Ontario Inc. c.o.b. as ABC Plumbing Heating & Electrical**, Responding Party v. 1702786 Ontario Inc., Interested Party; International Brotherhood of Electrical Workers, Local 586, Applicant v. 1168768 Ontario Inc. and 1702786 Ontario Inc. c.o.b. as ABC Plumbing Heating & Electrical and ABC Electrical, Responding Party; International Brotherhood of Electrical Workers Local 586, Applicant v. 1702786 Ontario Inc., 1168768 Ontario Inc., 1750872 Ontario Inc., 1633676 Ontario Inc., 1727807 Ontario Inc. and 1503893 Ontario Inc., Responding Parties; International Brotherhood of Electrical Workers, Local 586, Applicant v. 1702786 Ontario Inc. and 1168768 Ontario Inc. c.o.b as ABC Plumbing Heating & Electrical, Responding Parties; International Brotherhood of Electrical Workers, Local 586, Applicant v. 1702786 Ontario Inc. and 1168768 Ontario Inc. c.o.b as ABC Plumbing Heating & Electrical or ABC Electric, Responding Party.

**Certification – Construction Industry – Practice and Procedure – Related Employer – Unfair Labour Practice –** IBEW applied for certification with six cards naming ABC as the responding party – After receiving the response by ABC stating it had no employees, IBEW sought leave to amend its application to change the name of the responding party to ABC Electric – The union filed a second application naming ABC and/or ABC Electric as the responding party – ABC Electric filed a list of six names in its response to both applications – After the Regional Certification Meeting the union requested that the Board issue an interim certificate (pending the resolution of other issues), which the responding parties objected to – Given that each possible outcome of the first and second application could lead to ABC Electric being certified, the Board examined whether it should exercise its discretion to issue an interim certificate – First, the Board decided that even if the first application was dismissed, any bar imposed would not be against ABC Electric; second the Board had no concerns with the two sets of membership cards supplied by the applicant; and finally, the obligation to conclude a collective agreement which flows from the interim certificate does not provide a valid reason for the Board to refuse to exercise its discretion – **Interim Certificate Issued – Matter continues**

**BEFORE:** *Mark J. Lewis*, Vice-Chair.

**DECISION OF THE BOARD:** April 18, 2011

1. Board File Nos. 3811-10-R and 3930-10-R are both applications for certification filed under the construction industry provisions of the *Labour Relations Act*, 1995, S.O. 1995, c.1, as amended (the “Act”).
2. Board File No. 4154-10-R is an application under subsection 1(4) of the Act which the applicant has filed against both 1168768 Ontario Inc and 1702786 Ontario Inc., along with various other entities which are not directly involved in the applications for certification.
3. Board File Nos. 3907-10-U and 0041-11-U are both applications under section 96 of the Act, which involve (some and/or all of) these same parties and which are directly related to the applications for certification.

### Background to this Decision

4. Board File No. 3811-10-R (the "First Application") was filed on February 17, 2011 and concerns a bargaining unit of all journeymen and apprentice electricians, all journeymen and apprentice linemen, all journeymen and apprentice network cabling specialists and all communications installers employed in the ICI sector of the construction industry in the Province of Ontario, and in all other sectors of the construction industry in Board Areas 13 and 15, save and except non-working foremen and persons above the rank of non-working foreman.

5. When it initially filed the First Application on February 17, 2011, the applicant listed the responding party as being 1168768 Ontario Inc. c.o.b. as ABC Plumbing Heating & Electrical.

6. On February 23, 2011, 1168768 Ontario Inc. c.o.b. as ABC Operations (collectively with 1168768 Ontario Inc. c.o.b. as ABC Plumbing Heating & Electrical hereinafter referred to as "ABC") delivered to the applicant, and filed with the Board, a response to this application in which it asserts that it employed no employees in the bargaining unit applied for, and had no active job sites, on the date of application.

7. On February 24, 2011, the applicant sought leave of the Board to amend its application by changing the name of the responding party to 1168768 Ontario Inc. c.o.b. as ABC Plumbing Heating & Electrical and/or 1702786 Ontario Inc. Prior to making this request to the Board, the applicant certified that it had delivered a copy of its submissions, its *amended application* and the other required documents to counsel for ABC and to 1702786 Ontario Inc.

8. In a decision dated February 25, 2011, the Board issued a number of directions concerning the applicant's amendment request. In accordance with one of these directions, on March 1, 2011, 1702786 Ontario Inc. c.o.b. as ABC Electric (hereinafter referred to as "ABC Electric") filed a response to the amended application, provided the requisite information in accordance with subsection 128.1(3) of the Act (namely, a Schedule 'A' – List of Employees containing six names) and set out its positions concerning the applicant's amendment request. Amongst other positions, ABC Electric denied that it and ABC are related employers within the meaning of the Act and asserted that the applicant's amendment request was not appropriate and that both that request and the First Application, as originally filed against ABC., should be dismissed (based on ABC's position that there were no employees in the bargaining unit applied for on the date of application). ABC takes exactly the same positions as ABC Electric concerning the relationship between the two companies, the applicant's amendment request and the disposition of the First Application.

9. Thereafter, the Board, in a decision dated March 4, 2011, determined that this matter should proceed to a Regional Certification Meeting, which was scheduled to, and did in fact, take place on March 30, 2011. In addition, in the same decision the Board directed the applicant to file an application under subsection 1(4) of the Act concerning ABC and ABC Electric. The applicant complied with that direction when it filed Board File No. 4154-10-R on March 17, 2011.

10. On February 28, 2011, the applicant filed Board File No. 3930-10-R (the "Second Application"). This application related to the same bargaining unit as the First Application but the responding party was listed (from the outset) as being ABC and/or ABC Electric. Both ABC

and ABC Electric filed timely responses to this Second Application. Once again ABC asserted that it had no bargaining unit employees on the date of application and ABC Electric filed a list of such employees in accordance with the provisions of subsection 128.1(3) of the Act (which, once again, contained six names). Both parties requested that the Second Application be held in abeyance pending the Board's determination of the First Application. The Board declined to follow the parties' request and, in a decision dated March 8, 2011, instead referred the Second Application to a Regional Certification Meeting to be held together with the Regional Certification Meeting for the First Application.

11. Following the Regional Certification Meeting, the applicant requested (in a letter to the Board dated March 31, 2011) that the Board immediately issue an interim certificate with respect to the employees in the bargaining unit applied for (in both applications) in the employ of ABC Electric, pending the final resolution of the various other issues in dispute between these parties. Thereafter, in a decision dated April 1, 2011, the Board directed the responding parties to file any submissions that they wished the Board to consider in response to the applicant's request (by no later than April 11, 2011). ABC Electric filed extensive submissions (in response to the applicant's request) in which it asserts that, for various reasons set out in more detail hereinafter, the applicant's request for interim certification should be dismissed. ABC appears to generally support all of ABC Electric's positions and the various other responding parties in Board file No. 4154-10-R have indicated to the Board that, although they do not intend to file submissions concerning this particular matter given that they are not directly involved in either of the applications for certification, they all generally oppose the applicant's request.

### Decision

12. As all of the (participating) parties agree, the Board has the necessary jurisdiction to issue *interim certificates* (see, subsection 9(2) of the Act and, for example, *Robin Hood Multifoods Inc.*, [1985] OLRB Rep. July 1159). The real question is then – is it appropriate to exercise that jurisdiction in these particular circumstances? Answering that question involves establishing exactly what issues remain in dispute in these two applications for certification and determining what all of the possible outcomes *vis-à-vis* those remaining issues are.

### The First Application

13. With respect to both the First and the Second Application, the Registrar has certified that the applicant has been found to be a trade union in an earlier proceeding under the Act and Ron Lebi, counsel for the applicant with knowledge of its affairs has declared the applicant is a trade union that according to established trade union practice pertains to the construction industry. Therefore, having regard to section 113 of the Act, the Registrar's certificate and the applicant's declaration, the Board finds that the applicant is a trade union within the meaning of sections 1(1) and 126(1) of the Act and is an affiliated bargaining agent of a designated employee bargaining agency. Pursuant to the designation issued by the Minister under section 153(1) of the Act on November 13, 2001, the designated employee bargaining agency is the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario.

14. Further, and as set out in the Board's decision of March 4, 2011, the First Application is an application for certification within the meaning of section 128 of the Act and is an application made pursuant to section 158(1) of the Act which provides that:

An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,

- (a) an employee bargaining agency; or
- (b) one or more affiliated bargaining agents of the employee bargaining agency,

on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

15. Accordingly, the Board finds, as both ABC and ABC Electric agreed in their respective responses to the First Application, that, pursuant to section 158(1) of the Act, all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of the responding party in all other sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, the City of Ottawa and the United Counties of Prescott and Russell save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

16. What is, then, still in issue in the First Application, is the correct name of the responding party, given the applicant's amendment request, and, thereafter, the determination of the percentage of employees in the bargaining unit who were members of the applicant as of the date that the application was filed, being February 17, 2011.

17. Whether the applicant's amendment request is appropriate is dependent upon the subsection 1(4) application. Put succinctly, if ABC and ABC Electric constitute a single employer for the purposes of the Act (pursuant to the provisions of section 1(4)), as the applicant alleges, then the requested amendment would be appropriate and the responding party in the First Application would be *ABC and ABC Electric*. Conversely, if these two entities are found not to constitute a single employer, as both ABC and ABC Electric assert, then the requested amendment would not be appropriate, and the responding party in the First Application would remain as, simply, *ABC*.

18. In their respective responses, ABC claims it employed no bargaining unit employees on the date of application (a position which ABC Electric agrees with) and ABC Electric claims the six (6) individuals on the Schedule "A" – List of Employees (which it filed as part of its response) were its employees who were at work in the bargaining unit, on the date of application (a position agreed with by ABC). There are then two possible outcomes with respect to the

number of employees in the bargaining unit on the date of application which could result from the positions being asserted by ABC and ABC Electric. If ABC (alone) is the responding party then there would be zero employees in the bargaining unit on the date of application. Alternatively, if the responding party is ABC and ABC Electric then there would be (according to them) six employees in the bargaining unit.

19. In the First Application, the applicant filed membership evidence on behalf of eight (8) persons, all of which is dated on or before February 17, 2011 (the first date of application). The names of four (4) of these eight (8) individuals appear on the list of six (6) employees submitted by ABC Electric. Therefore, the Board is satisfied that more than fifty-five per cent of the employees of ABC Electric, in the bargaining unit applied for, were members of the applicant on the date the First Application was filed.

20. Accordingly, the Board is satisfied that, if ABC and ABC Electric is the correct responding party in the First Application (pursuant to the amendment request and the section 1(4) application), it should certify the applicant with respect to the employees of ABC Electric (and ABC).

21. Alternatively, if ABC (alone) is the responding party in the First Application then (according to both ABC and ABC Electric) there would be no employees in the bargaining unit and this application would be dismissed under section 9(1) and/or 128.1(7). Both ABC and ABC Electric assert, in their submissions to the Board concerning the applicant's interim certification request, that, in the event the Board dismissed the First Application, they would argue that the Board should also impose a bar in respect of further applications for certification (including the Second Application). There are various sections of the Act which provide for mandatory and discretionary bars following unsuccessful applications for certification. However, and notwithstanding the fact that it is unclear to the Board why a bar would be imposed following the dismissal of an application under sections 9(1) or 128.1(7), all such statutory bars apply to employees in a bargaining unit which was the subject of an earlier application. If the applicant's request to amend the name of the responding party is denied (because ABC and ABC Electric are found not to constitute a single employer), the only responding party in the First Application would be ABC. Therefore, any possible bars (to future applications) imposed following the dismissal of this application would, of necessity, only relate to employees of ABC and would therefore have no relevance in future applications involving employees of any other employers, including ABC Electric.

#### The Second Application

22. The Second Application is also an application for certification within the meaning of section 128 of the Act and is also an application made pursuant to section 158(1) of the Act.

23. Accordingly, subject to the disposition of the First Application, the Board finds, as both ABC and ABC Electric again agreed in their respective responses to the Second Application, that pursuant to section 158(1) of the Act, all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication

cable installers in the employ of the responding party in all other sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, the City of Ottawa and the United Counties of Prescott and Russell save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

24. As discussed above, if ABC and ABC Electric constitute a single employer pursuant to subsection 1(4) then the applicant will be certified in the First Application and the Second Application will be dismissed as being untimely under the Act. Conversely, if ABC and ABC Electric are found not to constitute a single employer, then, based on the positions of the parties (and in particular the positions of ABC and ABC Electric), the Second Application will be dismissed as against ABC (either as a result of a bar or because ABC did not employ any employees in the bargaining unit on the date of application – February 28, 2011). However, and again as set out above, no bar can apply to applications concerning employees of ABC Electric as a result of the dismissal of the First Application if ABC Electric was not a responding party in the First Application. Further, in its response, ABC Electric specifically asserts that it employed bargaining unit employees on February 28, 2011. Therefore, in the event that the First Application is dismissed, the Second Application will still proceed with ABC Electric being the only responding party.

25. In the Second Application, the applicant filed a second set of membership evidence on behalf of eight (8) persons, all of which is dated on or before February 28, 2011 (the second date of application). The names of four (4) of these eight (8) individuals appear on the list of six (6) employees submitted by ABC Electric. Therefore, the Board is satisfied that more than fifty-five per cent of the employees of ABC Electric in the bargaining unit applied for were members of the Applicant on the date the Second Application was filed.

26. Accordingly, the Board is satisfied that, if ABC Electric (alone) is the correct responding party in the Second Application (pursuant to the dismissal of the subsection 1(4) application and the dismissal of the amendment request, and, therefore, the dismissal of the First Application), it should certify the applicant with respect to the employees of ABC Electric.

#### Discretion

27. Any decision of the Board to issue an interim certificate obviously involves the exercise of its discretion. In its submissions to the Board, dated April 8, 2011, ABC Electric claims that the Board should not exercise such discretion in this matter as:

...

The Board has issued early Certificates (either interim or final) in cases where there were outstanding issues concerning the description or composition of the bargaining unit which could not affect the union's entitlement to certification (S. 9(2) of the Labour Relations Act; Robin Hood Multi food Inc., [1985] OLRB Rep. July 1159). However, this jurisprudence does not capture the present situation. There are no longer any disputes with respect to the description or composition of the bargaining unit, but other legitimate issues remain outstanding.

Quite apart from the percentage of employees who are members of the union, there are two disputes which must be determined; the Related

Employer Application and the membership evidence issues. If either of those disputes are decided against the Applicant, then ABC Electric's position will be that both Applications should be dismissed. Therefore, the Applicant's entitlement to any Certificate turns on the outcome of those two disputes, and it would be inappropriate to issue a Certificate while those disputes remain unresolved.

Furthermore, if this Board issues an interim Certificate, it would be impossible to commence meaningful bargaining because the identity of the employer has yet to be determined. Essentially, the Applicant is seeking to require ABC Electric to conclude a collective agreement which may or may not ultimately bind five other corporations who had no right or authority to participate in the bargaining process. The question of whether the other corporations should be subject to this prejudice depends on whether this Board determines that they are related to ABC Electric for labour relations purposes. Therefore, any such Certificate would serve no useful purpose until the Related Employer Application is determined.

...

28. As specifically set out above, the ultimate outcome of the subsection 1(4) application will have no effect on the Board certifying a bargaining unit of ABC Electric's employees and, even assuming the First Application is dismissed and a bar is imposed, in these circumstances any such bar would not apply to the Second Application as it relates to ABC Electric.

29. In addition, as noted above, the Board has no concerns about the membership evidence (and in particular the dates of two sets of membership cards) relied upon by the applicant in these matters.

30. Finally, the Board finds that the obligation *to conclude a collective agreement* which interim certification would impose on ABC Electric does not provide a valid reason for the Board refusing to exercise its discretion in these circumstances. In addition, here, it is simply incorrect to state that there is no purpose in certifying ABC Electric until the section 1(4) application has been decided because no meaningful bargaining can/will take place, in any event. Specifically, the Board would note that, in the largest sector of the construction industry, the ICI sector, no negotiations are required as ABC Electric will be automatically bound to the Principal Agreement between the two EBA's, as a matter of law. Similarly, in any other sectors where an accreditation order exists with respect to the applicant's bargaining rights, ABC Electric will also be automatically bound to the existing collective agreement(s). Further, the Principal Collective Agreement, and any other collective agreements which ABC Electric might become bound to, could only apply to any other entities which ABC Electric is related to pursuant to the provisions of subsection 1(4) of the Act. In this respect, ABC Electric, ABC, and any other possible related entities, are clearly in the best position to judge the extent to which they are related and to govern themselves accordingly. In effect, any *problems* that ABC Electric, ABC and any other possible related entities would face, as a result of interim certification, are exactly the same as those faced by any combination of employers who have been named as responding parties in subsection 1(4) applications.

Disposition

31. Based on all of the above, the Board is satisfied that, in these circumstances, it is appropriate to grant the applicant's request and to certify it on an interim basis as its right to certification for a bargaining unit of ABC Electric employees cannot be affected by the Board's ultimate decisions concerning any issues which remain in dispute in these matters.

32. Section 128.1(24) of the Act, which states as follows, provides for the issuance of more than one certificate if the applicant has the requisite support:

If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126,

...

- (b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13)(a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;

...

Therefore, pursuant to section 128.1(24) and its discretion under the Act, the Board certifies the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario in respect of all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario save and except non-working foremen and persons above the rank of non-working foreman.

33. Further, pursuant to section 128.1(24) and its discretion under the Act, the Board certifies the applicant trade union in respect of all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of 1702786 Ontario Inc. in all sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

32. The final certificates must await the determination of the subsection 1(4) application, which, as noted above, will enable the Board to fully and finally resolve all issues outstanding in the two applications for certification. Further to this, these five matters are all hereby referred to the Registrar to be listed for hearing together, and along with Board File No. 0126-11-U, a further application under section 96 of the Act involving these parties.

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**3948-10-R** The Restoration Council of Ontario, Applicant v. A.A.F. Construction, Responding Party.

**Certification – Construction Industry – Trade Union –** After finding that the Restoration Council of Ontario (RCO) was a council of trade unions within the meaning of sections 1(1) and 126(1) of the Act, the Board addressed the issue of whether a council of trade unions could have individuals as members – The Board first noted that although the Act defines a trade union as an organization of employees, the case law does not require that it must be an organization of only employees, and that the same reasoning ought to be applied when determining whether an organization is a council of trade unions – The Board went on to find that a council of trade unions once certified is a “trade union” within the meaning of the Act, and that together with s. 12(3) contemplates the possibility of a certified council of trade unions having individuals as members – Finally, if an organization of employees can be a trade union, and an organization of trade unions, once certified, can be a trade union, then surely one entity that encompasses both employees and unions can also be a trade union – **Certification granted**

**BEFORE:** *Harry Freedman*, Vice-Chair.

**DECISION OF THE BOARD:** April 6, 2011

1. The Board by decision dated March 16, 2011 in this application for certification being dealt with under section 128.1 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the “Act”) directed the applicant to file evidence and submissions in relation to the concerns the Board had with respect to whether the applicant had established it was a council of trade unions within the meaning of section 126(1) of the Act.

2. The Board pursuant to section 12(2) of the Act had postponed the determination of this application for certification to enable the applicant to obtain from its constituent unions evidence that demonstrates the constituent unions had vested sufficient authority in the applicant to enable it to discharge the responsibilities of a bargaining agent. The Board in that March 16<sup>th</sup> decision also expressed concern as to whether the applicant could be a council of trade unions within the meaning of the Act when it accepts individuals as members.

3. The applicant by letter dated April 5, 2011 filed submissions and additional evidence which it submits ought to satisfy the Board the applicant has obtained the requisite authority to discharge the responsibilities of a bargaining agent under the Act. The applicant also submits the Act contemplates that a council of trade unions can also be a trade union within the meaning of the Act and therefore can accept individuals as members.

4. Section 1(1) of the Act defines the terms “trade union” and “council of trade unions” as follows:

“council of trade unions” includes an allied council, a trades council, a joint board and *any other association of trade unions*;

“trade union” means *an organization of employees formed for purposes that include the regulation of relations between employees and employers and*

includes a provincial, national, or international trade union, a *certified council of trade unions* and a designated or certified employee bargaining agency. [emphasis added]

Section 126(1) of the Act provides further definitions applicable to the construction industry for the terms "trade union" and "council of trade unions". That section states:

"council of trade unions" means a council that is formed *for the purpose of representing* or that according to established bargaining practice *represents trade unions as defined in this section*; [emphasis added]

"trade union" means a trade union that according to established trade union practice pertains to the construction industry.

The other provision of the Act relevant to the disposition of this matter is section 12. That section provides in part:

(1) Sections 7 to 15, 126, 128 and 128.1 apply with necessary modifications to an application for certification by a council of trade unions, but, before the Board certifies such a council as bargaining agent for the employees of an employer in a bargaining unit, the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent.

(3) For the purposes of sections 7, 8 and 128.1, a person who is a member of any constituent trade union of a council shall be deemed by the Board to be a member of the council.

5. The Board in its March 16<sup>th</sup> decision reviewed the applicant's constitution, by-laws, minutes of its founding meeting and the membership evidence it had filed and held the applicant had established it "is an organization of employees formed for purposes that include the regulation of relations between employees and employers" and therefore was satisfied the applicant is a trade union within the meaning of section 1(1) of the Act. The Board noted, however, that as a new trade union that was not a local of an existing construction trade union, it was required to demonstrate it had a practice pertaining to the construction industry in order to bring an application for certification under section 128.1 of the Act. Nothing in the material filed by the applicant suggests it had an established practice pertaining to the construction industry when it filed this application. In the result, although the applicant is a trade union as defined by section 1(1) of the Act, it was not a trade union within the meaning of section 126(1) on the date it made this application.

6. The applicant asserts it is a council of trade unions as defined by section 126(1) of the Act. A council of trade unions is defined by section 1(1) to include any type of association of trade unions. In order for the Board to find that a "council of trade unions" is a construction industry council of trade unions the Board must be satisfied that the council was "*formed for the purpose of representing* or that according to established bargaining practice *represents trade unions in the construction industry*." The Board noted at paragraph 5 of its March 16<sup>th</sup> decision that the two constituent unions comprising the applicant (the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (the "CDC") and the Operative Plasterers and Cement Masons International Association, Local 598 ("Local 598")) are

both trade unions that according to established trade union practice pertain to the construction industry.

7. Article 3 (i) of the applicant's constitution provides:

The Restoration Council of Ontario was formed to fulfill the following objectives:

- (i) Represent the CDC and Local 598, both of which are trade unions that according to established trade union practice pertain to the construction industry.

Article 3(i) of the applicant's constitution provides some evidence that one of the applicant's purposes is to represent the CDC and Local 598, both of which are trade unions in the construction industry.

8. The applicant has also filed resolutions of the executive boards of both the CDC and Local 598 that were adopted on March 21, 2011 and March 25, 2011 respectively. The resolution passed unanimously by Local 598 on March 25<sup>th</sup> provides in part:

1. Local 598 adopts and agrees to be bound by the constitution of the RCO [Restoration Council of Ontario];
2. Local 598 appoints the RCO as its agent to act on its behalf in conducting collective bargaining and in administering its collective agreement related to restoration employers in the non-ICI sectors of the construction industry in the province of Ontario.
3. Local 598 vests all necessary authority in the RCO to enable it to bargain on its behalf with restoration employers in the non-ICI sector of the construction industry in the Province of Ontario.

The CDC executive board unanimously passed a similar resolution on March 21, 2011 which states, in part:

1. The Council adopts and agrees to be bound by the constitution of the RCO (which is attached to this resolution);
2. The Council appoints the RCO as its agent to act on its behalf in conducting collective bargaining and in administering its collective agreements related to restoration employers in the non-ICI sector of the construction industry in the Province of Ontario.
3. The Council vests all necessary authority in the RCO to enable it to bargain on its behalf with restoration employers in the non-ICI sector of the construction industry in the Province of Ontario.

9. Based on article 3(i) of the applicant's constitution and the resolutions passed by its two constituent unions, the Board is satisfied the applicant was formed for the purpose of representing the CDC and Local 598 in collective bargaining, but that is not its only purpose as noted at paragraph 17 of the Board's March 16<sup>th</sup> decision.

10. Both the CDC and Local 598 have adopted and have agreed to be bound by the applicant's constitution. Moreover, the resolutions passed by Local 598 and the CDC have expressly vested all the necessary authority in the applicant to enable it to carry out the responsibilities of a bargaining agent. Therefore, the Board is satisfied the applicant has demonstrated it has met the requirements to be found to be a council of trade unions within the meaning of section 1(1) and 126(1) of the Act.

11. The Board in its March 16<sup>th</sup> decision expressed some doubt about whether a council of trade unions could have individuals as members, or to put it another way, whether an organization that admits individuals as members could still be a council of trade unions within the meaning of the Act. That doubt was based in part on the definition of council of trade unions in section 1(1) of the Act which indicates a council of unions is an organization of unions and the Board's decisions in *A-1 Superior Paving and Concrete Works Co.*, [2008] OLRB Rep. July/August 485 and *CDM Drywall*, unreported, Board File No. 3706-04-R, decision dated February 4, 2005, 2005 CanLII 2587 (ON LRB).

12. The applicant in its submissions contends there can be no doubt the applicant is a council of trade unions. It then states:

The only issue is whether the acceptance of individual members disentitles the RCO from status as a council of trade unions within the meaning of section 126(1) of the Act.

The applicant urges the Board not to reach that conclusion. It points out there is nothing in either section 126(1) or in section 1(1) that precludes a council of trade unions from having individuals as members. It also points to section 12(3) of the Act which, for purposes of an application for certification, provides that a member of a constituent union of a council is deemed to be a member of the council. The applicant argues the Act contemplates individuals might, in some circumstances, be members of a council of trade unions. Therefore, the fact the applicant's constitution provides that individuals can become members of the applicant ought not to disqualify it from being a council of trade unions within the meaning of the Act.

13. The Board in *Low Down Productions*, Board File No. 2805-97-R, decision dated December 10, 1997, unreported, Q.L. cite [1997] OLRD No. 4173 found that the Northern Ontario Joint Council was a trade union within the meaning of the Act and was also a council of trade unions as defined by the Act. The Board did not in that case explicitly address whether a council of trade unions could admit individuals as members but appeared to accept a council could. The Board in both *A-1 Superior Paving and Concrete Works Co.* and *CDM Drywall* did not cite any authority for the proposition that a council of trade unions could not accept individuals as members but appeared to assume if it was in fact a council then it could not.

14. It is clear from the provisions of the applicant's constitution that it seeks to represent and bargain on behalf of employees who perform construction industry restoration work outside the industrial, commercial and institutional sector of the construction industry in the Province of Ontario. The applicant also has established that it represents its two constituent unions in bargaining with restoration employers. It seems to me the Board should assess whether the applicant's admission of individuals into membership affects whether it is a council of trade unions in the same way the Board assessed whether an organization that admitted as members persons who were not employees could still be a trade union within the meaning of the Act.

15. The Board in *York Board of Education*, [1984] OLRB Rep. Sept. 1279 was required to determine whether the organization seeking certification to represent persons employed as teachers but that also had principals as members was a trade union within the meaning of the Act. The Board at page 1326 wrote:

We conclude that the phrase 'organization of employees' in paragraph 1(1)(p) [now section 1(1)] of the Act does not mean "organization of employees only". The mere fact that an organization has in its membership persons whose employment requires them to exercise managerial functions within the meaning of paragraph 1(3)(b) of the Act will not stand in the way of a finding that the organization is a "trade union" within the meaning of paragraph 1(1)(p) of the Act, if it otherwise qualifies to be so described.

See also *Etna Foods of Windsor Limited*, [1986] OLRB Rep. June 710; *Ontario Hydro*, [1989] OLRB Rep. Feb. 185 and *Hamilton Construction Association and Builders Exchange v. OLRB*, [1963] 2 O.R. 293, 39 D.L.R. (2d) 338, 63 CLLC ¶15,477 (Ont. H.C.) which all stand for the proposition that although the Act defines a trade union as an organization of employees it does not mean it is an organization of only employees. In my opinion, that same reasoning ought to apply when determining whether an organization is a council of trade unions within the meaning of the Act.

16. Sections 1(1) and 126(1) of the Act together suggest that a council of trade unions for purposes of an application for certification in the construction industry is an organization of construction industry trade unions that represents construction industry trade unions. There is nothing in those definitions that requires a council of trade unions to be *only* an organization of trade unions. Moreover, there is nothing in the Act that requires a council of trade unions to be established *only* for the purpose of representing trade unions. That is, a council can be an organization of trade unions and an organization of employees simultaneously when its constitution provides it is formed for the purpose of representing employees in collective bargaining and for the purpose of representing trade unions. That is precisely what the applicant is. The applicant is an organization of two trade unions that represents its two constituent unions and it is also an organization of employees that admits individuals into membership.

17. A council of trade unions once certified is a "trade union" within the meaning of the Act. That, together with section 12(3) must mean the Act envisages the possibility of a certified council of trade unions having individuals as members although it need not do so. The Board in *Humber River Regional Hospital*, decision dated January 26, 2011, unreported, Board File Nos. 1092-09-R, 1131-09-R and 1133-09-R, 2011 CanLII 2715 (ON LRB) application for reconsideration dismissed, decision dated February 14, 2011, unreported, 2011 CanLII 6689 (ON LRB) held an organization that contemplated both individual employees and independent employee organizations becoming members was a trade union within the meaning of Act. There is no doubt that an organization of employees can be a trade union within the meaning of the Act and an organization of trade unions once certified is a trade union within the meaning of the Act. If those two distinct types of organizations can each be a trade union within the meaning of the Act, surely one entity that encompasses both employees and unions can also be a trade union within the meaning of the Act. In my view, a council of trade unions that admits individuals as members continues to come within the definitions of council of trade unions in sections 1(1) and 126(1) of the Act.

18. In the result, I am satisfied the applicant is a council of trade unions within the meaning of sections 1(1) and 126(1) of the Act. The two constituent members of the applicant are the CDC and Local 598 and they have vested appropriate authority in the applicant to enable it to discharge the responsibilities of a bargaining agent within the meaning of section 12(1) of the Act.

19. The Board in its March 16<sup>th</sup> decision also noted the applicant's constitution purported to have the CDC and Local 598 assign their bargaining rights in respect of employers doing restoration work outside the industrial, commercial and institutional sector of the construction industry to the applicant. The Board expressed concern about the ability of a trade union to effect the assignment of its bargaining rights to another trade union or council of trade unions absent a declaration under section 68 of the Act having regard to *Famous Players Inc.*, [1995] OLRB Rep. July 954. See also in that regard *LML Foods Inc.*, [1985] OLRB Rep. Aug. 1252 at 1266.

20. The applicant in its submissions requested the Board defer consideration of that issue as it is not necessary to the determination of this case. I agree with the applicant. It is not necessary for the Board to decide whether the constituent unions of the applicant have assigned bargaining rights to the applicant. What is clear is that those two unions have authorized the applicant to represent them and have, by adopting the applicant's constitution and through the resolutions unanimously passed by their respective executive boards, vested the applicant with the necessary authority to discharge the responsibilities of a bargaining agent.

21. The responding party filed its response with the Board within the time stipulated by Rule 25.5 of the Board's Rules of Procedure and provided the Board with the requisite information in accordance with subsection 128.1(3) of the Act.

22. The Board further finds that this application does not relate to the industrial, commercial and institutional sector of the construction industry referred to in section 126 of the Act.

23. The responding party agreed with the bargaining unit proposed by the applicant.

24. The Board further finds, pursuant to subsection 158(2) of the Act and on agreement of the parties that all carpenters and carpenters' apprentices and all masonry restoration employees employed by the responding party in all sectors of the construction industry other than the industrial, commercial and institutional sector in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township) save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

25. The applicant filed membership evidence consisting of applications for membership by which the individuals signing those documents apply for membership in the applicant and authorize the applicant "or its designates to act for me as collective bargaining agent...." On the basis of only the information provided in the application, including the information and membership evidence filed by the applicant and the information provided by the responding party under subsection 128.1(3) of the Act, the Board is satisfied that more than fifty-five per cent of the employees in the bargaining unit were members of the applicant at the time the application was filed. The responding party filed a list of four employees who were in the bargaining unit on the date the application was filed. The applicant filed membership evidence on behalf of all four of those persons.

26. The applicant has asked that it be certified pursuant to section 128.1 relying solely on the number of persons in the bargaining unit who are its members. It is entitled to do so under section 128.1. There is nothing in the application or the response that would cause the Board to consider directing a representation vote.

27. The Board has received no objection from any employee within the time set in the Notice to Employees provided to the responding party for posting.

28. The Board is satisfied that it should certify the applicant.

29. Therefore, pursuant to subsection 128.1(13) of the Act, a certificate will issue to the applicant trade union in respect of all carpenters and carpenters' apprentices and all masonry restoration employees in the employ of A.A.F. Construction in all sectors of the construction industry other than the industrial, commercial and institutional sector in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non-working foreman.

30. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 30 days.

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**3794-10-M** Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Authentech Communications Canada Inc.**, Responding Party.

**Certification – Interim Relief – Unfair Labour Practice – The Board held a consultation into the discharge of one employee during an organizing drive – In its analysis of the relevant criteria, the Board determined that the employer's rationale for dismissing the employee six weeks after the alleged incident giving rise to the discipline was too remote and unpersuasive – More significantly, the Board looked at the irreparable harm to the union, and the expressed fears of employees who would have to testify in the unfair labour practice complaint – If the conclusions reached by the employees regarding links between the campaign and the employee's discharge are not corrected, growing erosion of union support may not be stemmed – Reinstatement ordered**

**BEFORE:** *Jack J. Slaughter*, Vice-Chair.

**APPEARANCES:** *Giuseppe Agostino, Carlos Pinheiro, Felicia Riga, Duane Cook, Jason Meadus, John Shearer and Aman Gandhi* appearing for the applicant; *M. David Ross William Clarke, Michael McQuay and Glen Doucet* appearing for the responding party.

**DECISION OF THE BOARD:** March 17, 2011

1. This is an application filed on February 16, 2011 by Labourers' International Union of North America, Ontario Provincial District Council ("the Union") with respect to Authentech

Communications Canada Inc. ("the Employer") for an interim order pursuant to section 98 of the *Labour Relations Act, 1995*, S.O. 1995 c.1 as amended (the "Act"). This application relates to a pending unfair labour practice complaint filed by the Union against the Employer in Board File No. 3795-10-U and a pending application for certification (construction industry) filed by the Union against the Employer pursuant to section 128.1 of the Act in Board File No. 3647-10-R.

2. In this interim order application, the Union is seeking reinstatement of John Shearer, a supporter of the Union whose employment was terminated by the Employer on February 1, 2011, the date the Union filed the pending certification application. During the course of the consultation, the Union withdrew its request for reinstatement of Jason Meadus, another union supporter whose employment was terminated by the Employer on February 1, 2011.

3. The Board conducted a consultation in this matter over two days, namely February 25 and March 3, 2011. Over the course of the consultation, each party was allowed the opportunity to make full submissions and legal argument. The Board did not permit cross-examination of the declarants, but did pose questions to the declarants on relevant issues to obtain the information necessary to decide this matter.

4. At the outset of the consultation, the Board heard argument on two preliminary issues: the admissibility of the declaration of Aman Ghandi submitted by the applicant; and the admissibility of a transcript of certain conversations recorded by Mr. Gandhi on his I-Phone. At the conclusion of the morning of the first day of the consultation, the Board rendered the following oral ruling on those issues:

Counsel for the responding party objects to the admissibility of all of the declaration of Aman Ghandi except paragraphs 1-4 and 10. Counsel for the responding party also objects to the declaration of Felicia Riga which attaches transcripts of recordings of conversations made by Mr. Ghandi.

The Board will deal with the admissibility of Mr. Ghandi's declaration first. Paragraphs 5 to 25 relate to conversations where Mr. Ghandi alleges he was present on January 31, 2011. Paragraphs 26 to 39 appear to relate to conversations where Mr. Ghandi was present on February 1, 2011, the date the Union filed its certification application. Paragraphs 40 and following relate to subsequent events and beliefs of Mr. Ghandi.

As Mr. Ghandi asserts he was present for all of those conversations, it cannot be said, based upon his declaration, that he "intercepted" any conversation. All of the conversations bear, to a greater or lesser extent, upon issues related to ongoing employment of various persons at the responding party, the responding party's reaction to the Union, and the support or otherwise of various persons for the Union. The certification application and an unfair labour practice complaint are outstanding proceedings before the Board. In order to succeed in their applications, the Union will need to rely on information and perhaps testimony from the responding party's employees. The contents of Mr. Ghandi's declaration speak to potential issues of anti-union animus and reprisals which are relevant to the Board's calculation of whether interim relief is necessary to prevent irreparable harm to the Union and whether the terminations of Jason Meadus and John Shearer were for reasons unrelated to the exercise of rights protected by the Act. Therefore the entirety of the declaration is admissible. However, what weight, if any, will be attributed by the Board to the statements made in the declaration will be determined during the course of this application.

The audio evidence stands on a differed footing. It was not referenced in the applicant's initial declarations. From a review of the transcript, it is not clear who is saying what, where they were saying it, and in what context the statements were made. There are also at the very least concerns whether the recordings infringe certain employees' right to privacy, or even violate the *Criminal Code*. The Board does not need to determine these issues in the context of this case. To admit the audio evidence would prolong this application, without adding appreciably to the information the Board needs to decide this case on an expeditious basis. The relevant declarants are all before the Board today to respond to questions, and to allow this application to be dealt with expeditiously. The balance of labour relations considerations clearly favours excluding the audio evidence. Consequently, it shall be excluded.

5. After the oral ruling, the Board heard the submissions of the Union and questioned the three Union declarants whose declarations remained relevant: Jason Meadus, John Shearer, and Aman Gandhi, all of whom were rank and file employees of the Employer in and around the terminations of Messrs. Meadus and Shearer. Then the Board heard the submissions of the Employer and questioned the three Employer declarants: William Clarke, the owner of the Employer; Michael McQuay, the Employer's Human Resources Manager, and Glen Doucet, a Working Supervisor. Finally, the Board heard the Union's reply submissions and reserved its decision.

## LEGAL OVERVIEW

6. This case concerns the Union's request for the interim reinstatement of John Shearer. As such, this application is governed by section 98 of the Act, and more particularly, subsections (1) to (4) thereof. Those sections read as follows:

98. (1) On application in a pending proceeding, the Board may,
- (a) make interim orders concerning procedural matters on such terms as it considers appropriate;
  - (b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and
  - (c) subject to subsections (2) and (3), make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer.
- (2) The Board may exercise its power under clause (1)(b) or (c) only if the Board determines that all of the following conditions are met:
- 1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.

2. There is a serious issue to be decided in the pending proceeding.
3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.
4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.

(3) The Board shall not exercise its powers under clause (1)(b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.

(4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant.

...

7. Unlike an unfair labour practice complaint under section 96 of the Act where acts of discrimination or reprisal for the exercise of rights protected by the Act are alleged and a reverse onus is imposed by subsection 96(5) of the Act, the onus of proof in a section 98 interim application falls upon the applicant. In this case that is the Union. Under the clear language of subsection 98(2), the Board may only make an order to reinstate an employee on an interim basis where all four conditions prescribed therein are met.

8. In this case, the Employer concedes that the first two conditions have been satisfied. It was wise to do so. The fact that the Union's certification application was filed on the date Messrs. Meadus and Shearer were terminated is ample proof that a campaign to establish bargaining rights was underway, and the contents of all the relevant declarations in this matter confirms that. The termination of Union supporters in this context is clearly a serious issue to be decided. Where the parties part company is on the application of the final two criteria of subsection 98(2) and the test set out in subsection 98(3).

#### LEGAL ARGUMENT

9. Due to the need for expedition in interim order proceedings, the Board will not set out the entirety of the parties' arguments, but will briefly summarize them, and list the legal authorities relied upon by counsel.

10. The Union argues that Mr. Shearer is a relatively long-term employee of the Employer who was free from discipline prior to the incident relied upon by the Employer to justify his termination. The Union says that Mr. Shearer did nothing wrong in the incident, or alternatively, that if he did anything wrong his acts were either condoned or not regarded as serious by the Employer, as the incident occurred on December 23, 2010, but the termination did not take place until February 1, 2011. Instead the Union claims the terminations of Messrs. Shearer and Meadus came only after the Employer associated them with the Union's organizing campaign, which was the real reason behind the terminations.

11. The Union says that termination of known Union supporters will cause it irreparable harm as employees will now be unwilling to provide information to the Union or to testify on its behalf in the upcoming certification and unfair labour practice applications for fear of having their own employment terminated by the Employer. The Union points out that there are 34 outstanding employee status challenges in the certification application, and numerous incidents in the unfair labour practice application which will require information and testimony from bargaining unit employees. The Union maintains that the balance of harm is in its favour as the harm to its labour relations interests from not having Mr. Shearer reinstated outweighs any economic harm to the Employer arising from the requirement to rehire him.

12. The Union says that the incident relied upon by the Employer to terminate Mr. Shearer's employment does not provide a plausible explanation for the belated termination of his employment. The incident relates to damage to Truck 86, which had been assigned to Mr. Meadus and Mr. Shearer. Mr. Meadus was the driver of the truck. The Employer alleges that Mr. Meadus negligently drove the truck into the Employer's shop and damaged it while Mr. Shearer was in the passenger seat, and that both Messrs. Shearer and Meadus failed to report the incident. The Employer also alleges lateness and insubordination on the part of Mr. Shearer. However, the Union submits that Mr. Meadus did not negligently damage Truck 86; that the two men did not fail to report the damage because they did not cause it; and that there is no documentary evidence to support any other discipline to Mr. Shearer. Therefore, there is no valid evidentiary foundation for the Employer's "plausible explanation" of Mr. Shearer's termination. Instead, the cause is to be found in Mr. Shearer's support of the Union. The Union relies upon the declaration of Mr. Gandhi for numerous conversations where anti-Union sentiments, including economic threats, were made by Mr. Clarke to Mr. Gandhi and other employees.

13. More specifically, the Union urges the Board to consider the following four factors: 1) the delay in imposing discipline on Mr. Shearer; 2) the lack of documentary evidence surrounding Mr. Shearer's conduct and the investigation of the December 23, 2010 incident; 3) the lack of declarations from key individuals involved with the incident; and 4) the lack of details of Mr. McQuay's investigation.

14. By way of remedy, the Union requests the interim reinstatement of Mr. Shearer and a posting of this relief in the workplace in the usual manner.

15. The Union submitted the following cases for the Board's consideration: *AXA Electric Inc.* (2006) 130 C.L.R.B.R. (2d) 264 (Ont.); *Cooper Industries (Canada) Inc.*, [1994] OLRB Rep. March 225; *Cornwall Gravel Co. Ltd.*, [2006] OLRB Rep. May/June 332; *Cornerstone Structural Restoration Inc.*, [2008] OLRB Rep. November/December 760; *Percon Construction Inc.*, [2010] OLRB Rep. January/February 173; *Almon Equipment Ltd.*, [2009] OLRB Rep. July/August 526 ("Almon #1"); *Alaska Sash Door and Window Corp. Ltd. o/a Alaska Wood Industries* 2006 CanLII 37837 (ON LRB) (November 8, 2006); *Sarnia Paving Stone Ltd.*, [2005] OLRB Rep. September/October 840; *Patrolman Security Services Inc.*, [2005] OLRB Rep. September/October 818; *UPS Supply Chain Solutions Inc.*, [2005] OLRB Rep. September/October 904; *Toro Aluminum*, 2007 CanLII 26208 (ON LRB) (July 5, 2007); *Almon Equipment Ltd.*, 2009 CanLII 53134 (ON LRB) (October 2, 2009) ("Almon #2").

16. The Employer notes that this application is neither a grievance where just cause for termination needs to be shown, nor an unfair labour practice complaint involving a reverse onus. Rather, this matter is a section 98 interim order application where the onus is on the Union, which

is required to demonstrate that all four elements of subsection 98(2) are satisfied. While the Employer concedes that the first two criteria have been met, it focuses its argument on the latter two criteria and subsection 98(3).

17. The Employer submits that the termination of a Union supporter standing alone does not constitute irreparable harm to the Union. Furthermore, the Union has not shown that reinstatement of Mr. Shearer is necessary to protect its interests. Mr. Shearer was not a card collector for the Union, nor the "go-between" from the workers to the Union. In fact he was not even vocal about his support for the Union. The Employer says that it has a "very open workplace" where opinions pro and con about the Union have been exchanged. On all these grounds, the Employer submits that the Union has not shown irreparable harm will result if Mr. Shearer is not reinstated.

18. The Employer asserts that the balance of harm criterion is also in its favour. It says Mr. Shearer committed a serious employment offence in not reporting the damage done to Truck 86 done when he was a passenger and Mr. Meadus was driving. The Employer claims this breaches the "trust relationship fundamental to employment contracts". Furthermore, Mr. Shearer has been insubordinate. The delay between the December 23, 2010 incident and the February 1, 2011 termination can be explained by Mr. Clarke's vacation, Mr. McQuay's investigation, and the Employer's policy that it does not "rush to judgment" when disciplining or discharging its employees.

19. Additionally, the Employer argues that the Union has failed to prove a connection between any Union activity on the part of Mr. Shearer and his termination. The Employer disclaims any knowledge of Mr. Shearer being a Union supporter prior to the time of his termination.

20. The Employer provided the Board with the following authorities: *Princess Garden Retirement Residence*, [2010] OLRB Rep. March/April 309; *Wallaceburg Preferred Partners Corp.*, [2007] O.L.R.D. No. 1169 (March 20, 2007); *Ontario Lottery and Gaming Corporation*, [2006] OLRB Rep. January/February 95; *Novotel Canada Inc.*, [2010] OLRB Rep. March/April 287; *Value Village Stores Inc.*, [2006] O.L.R.D. No. 4580 (December 12, 2006); *K2 Electrical Contracting Ltd.*, [2006] OLRB Rep. May/June 375.

21. In reply argument, the Union asserts that in the circumstances the Union will suffer irreparable harm from the termination of a known union supporter, even if the individual was not an inside organizer. The Union emphasizes Mr. Shearer's wearing of Union apparel, and his association with Jason Meadus, who was a vocal Union supporter. The Union refers to numerous outstanding issues in the certification and unfair labour practice applications in respect of which it will need information and support from employees. Finally, the Union asserts that the facts of the culminating incident and the timing of the Employer's reaction to it are suspect, and suggest the termination of Mr. Shearer was related to his support for the Union.

#### ANALYSIS AND DECISION

22. There are three issues the Board must resolve in order to determine this application: whether interim relief is necessary to prevent irreparable harm to the Union or to achieve other significant labour relations objectives; the balance of harm; and if it appears to the Board that Mr. Shearer's termination was not unrelated to the exercise of rights under the Act.

23. The Board will now apply these considerations to this case. In making its findings, the Board is not deciding whether the Employer has violated the unfair labour practice complaint provisions of the Act, but is only determining whether the conditions set out in subsections 98(2) and (3) have been met: *Ontario Lottery, Alaska Sash and Door supra*.

*Whether Mr. Shearer's termination was unrelated to the exercise of rights under the Act*

24. As counsel for the Employer correctly suggests, the Board will examine all the information before it to determine if a plausible basis or explanation exists to support the Employer's decision to terminate the employee's employment: *Princess Gardens supra* at paragraph 27; *Wallaceburg supra* at paragraph 36. On the other hand, problematic and unlikely reasons for a termination advanced by an employer gravitate towards a conclusion that the termination was not unrelated to the exercise of rights under the Act: *Almon #2 supra* at paragraph 21. Factors the Board may consider include the timing of the discharge (*UPS Supply Chain Solutions supra*); an employer's record keeping and written warnings or the lack thereof (*Toro Aluminum supra*); and an employer's tolerance of an employee not living up to company expectations over a period of time (*Alaska Sash and Door supra*).

25. All of these principles have a bearing on the Board's determination in this case.

26. While the Board is only dealing with the interim reinstatement of Mr. Shearer, his termination is closely related to the termination of Jason Meadus, so both terminations must be examined together.

27. First the Board will look at the plausibility of the Employer's explanation for the termination of the two individuals, and the timing of those terminations. Both are problematic areas for the Employer. The culminating incident was an accident at the Employer's shop on the afternoon of December 23, 2010 where Truck #86 driven by Jason Meadus, with John Shearer in the passenger seat, was damaged. On that day both William Clarke and Michael McQuay, the owner and Human Resources Manager of the Employer, became aware of the damage, inspected the accident scene, knew Messrs. Meadus and Shearer were assigned to the truck, and tried to contact them. However, this was the last working day before Christmas. Mr. Clarke elected to leave the truck in the shop, not contact the Employer's fleet insurer, and to have the Employer's fleet mechanic repair the damage after returning from holiday in the Dominican Republic.

28. On December 28, 2010, Messrs. Clarke and McQuay questioned Mr. Shearer about the December 23, 2010 incident. On January 5, 2011, they did the same with Mr. Meadus. Neither employee received time off, a written warning or even an oral warning in these conversations.

29. However, Mr. McQuay claims that he was "tasked to investigate" the incident by Mr. Clarke, and that this investigation took some time because the Employer did not want to "rush to judgment". This assertion lacks credibility for several reasons. Firstly, Messrs. Clarke and McQuay made first-hand observations of the accident scene on December 23, 2010, including track marks and skid marks. They also had other potential witnesses immediately available to them including Tony D'Alonso, Larry Normore and Michael Taylor. Therefore, the Employer had ready access to all persons with potentially useful information about the incident available to them the very day of the incident. Secondly, both Messrs. Shearer and Meadus had responded to the Employer's queries by the end of January 5, 2011. Thus, the Employer should

have had a complete picture of what happened, albeit with varying explanations, by that time. The lack of any action by the Employer towards Messrs. Shearer and Meadus by that time made both men think the incident would not result in discipline to them, and they said so in their declarations.

30. Thirdly, and most suspect, is Mr. McQuay's subsequent "investigation" of the incident. His declaration states that it "took me just under a month to review all of the stories, re-evaluate the stories and provide my recommendation" to Mr. Clarke. Mr. McQuay's declaration provides no details of what that "review" and re-evaluation involved. In response to the Board's questions about the investigation, Mr. McQuay mentioned speaking once to Tony D'Alonso, once to Larry Normore and once to Jason Meadus. No notes were kept of these conversations. There is no indication that any new information was provided. Messrs. Meadus and Shearer were never given any opportunity to respond to the results of the "investigation" before they were terminated, despite the Employer's avowed intention not to "rush to judgment".

31. Accordingly, the questionable quality of the Employer's investigation is a factor the Board must consider.

32. There are other factors. The Employer relies on the failure of Mr. Shearer to report the incident. There is nothing in the information or materials before the Board to rebut Mr. Meadus' assertion he told Mr. D'Alonso to make Mr. Clarke aware of the damage to the truck on behalf of himself and Mr. Shearer. Both Messrs. Clarke and McQuay were aware of the damage no more than one hour after it happened. Furthermore, their most immediate questioning of Messrs. Meadus and Shearer after the incident related to what happened, and not the failure to report it. The "failure to report" issue was never canvassed with the two individuals, much less made the subject of a warning, before their terminations on February 1, 2011.

33. The timing is also problematic. For what the Employer submits to the Board is a serious employment offence involving significant property damage and health and safety risks to other employees, the Employer was notably lax in acting. The gap between the culminating incident and the terminations was 40 days. In contrast, the two other incidents of discipline referred to by the Employer as proof it does not "rush to judgment" occurred after a time lag of 4 days for the Jason Meadus locator damage incident in October 2010, and 13 days for the Michael Taylor termination which occurred in January 2011.

34. Finally, Mr. Shearer's termination letter also refers to lateness and Mr. Shearer "becoming very disgruntly and insubordinate". There were no specifics of this alleged misconduct in the Employer's declarations. In response to the Board's questions, it was disclosed that Mr. Shearer was never late in January 2011, as he drove to work with Mr. Meadus every day. He may have been late on some days in December, for good reasons or otherwise, but was never warned about it. Similarly, he was never warned about his "disgruntly and insubordinate" behaviour which apparently has been tolerated by the Employer for some time. Mr. McQuay referred to numerous problems with Mr. Shearer in response to the Board's questions. None of these appeared in Mr. McQuay's declaration. None of them ever resulted in a warning. Apparently, the Employer does have rules for its employees, but there is no record of their enforcement at all, much less any record of consistent enforcement.

35. In summary, the questionable circumstances of the Employer's investigation, the timing of the termination, the lack of prior warnings, and the toleration of alleged prior

misconduct all detract from the plausibility of the Employer's explanation for the termination of Mr. Shearer.

36. The Board now turns to the question of whether the termination was not unrelated to the exercise of rights under the Act. The Employer acknowledges it was aware of the Union's organizing drive. It also acknowledges that it has been aware of Mr. Shearer's affiliation with the Union through his past experience working for Union employers and his wearing Union apparel on job sites, including a Local 183 toque. However, Messrs. McQuay and Clarke deny knowing Messrs. Meadus and McQuay were supporting the Union in this application and deny their terminations were related to that support.

37. There are conflicts in the declarations and information before the Board as to what the employer's management knew or did not know about who the Union supporters were in this application. It is undisputed that Jason Meadus spoke to both William Clarke and Glen Doucet about the Union. While both deny that they questioned Mr. Meadus about signing a union card, Glen Doucet did admit in response to questions from the Board that he told Jason Meadus to tell the Union organizers that "we do not want to be bothered with this" and to "leave them alone". He denies speaking to Messrs. McQuay and Clarke about his discussions with Mr. Meadus.

38. Jason Meadus stated in his declaration and confirmed in the Board's questioning that he spoke to employees about supporting the Union, that other employees asked him about it, and that he specifically discussed with Mr. Doucet the idea of Mr. Doucet potentially supporting the Union. In response to the Board's questions, Mr. Shearer said that he did not approach other employees about supporting the Union, but did respond to a question from Mr. Doucet about whether he signed a Union card a day or two before his termination by saying "yes". Finally, there is information in the Union's declarations that rank-and-file employees Aman Gandhi and Chad Meadus (Jason Meadus' brother) associated the terminations of Jason Meadus and John Shearer with their support for the Union.

39. Mr. Gandhi in his declaration and response to the Board's questions detailed extensive anti-union statements, interrogation and threats by Mr. Clarke, all of which are denied by Mr. Clarke.

40. For the purposes of this application, it is not necessary to resolve all the factual conflicts. That will be done in the course of the unfair labour practice complaint. At this time, the Board will only make such findings as are necessary to determine the interim order application.

41. As the Board stated in *DES Building Contractors Inc.*, 2010 CanLII 35673 (ON LRB) (June 23, 2010), "in a small construction company an employee expressing interest in joining a union is not normally a neutral or ordinary event". Furthermore, the Board observed in *Triaxis Construction Limited* 2010 CanLII 72382 (ON LRB)

42. December 8, 2010) that the "news of a union organizing campaign often provokes swift and powerful negative reactions from employers". The labour relations reality is that construction company owners are concerned about "union talk" on their job sites, and are keenly interested in knowing the source of that talk.

43. Based upon all the information before it, the Board does not find it credible that Mr. Doucet did not discuss his conversations with Mr. Meadus and Mr. Shearer about the Union with Mr. Clarke. By his own admission, Mr. Doucet clearly told Mr. Meadus that the Employer "did not want to be bothered" with the Union and to leave the Union organizers alone. Mr. Doucet did not want the Union in the workplace, and identified both Jason Meadus and John Shearer with it. In a construction company in the midst of an organizing campaign, the Board's expectation and experience is that a working foreman opposed to unionization would communicate the identities of known Union supporters to senior management.

44. Furthermore, Mr. Clarke already at a minimum associated Jason Meadus with "union talk" through his previous conversation with Mr. Meadus, and John Shearer with the Union through his previous employment and wearing of Union apparel. To get them out of the workplace together would rid the Employer of the two most obvious sources of "Union talk" and Union identification, whether or not Messers. Meadus and Shearer were acting as Union organizers or had ever signed cards for the Union. In these circumstances, it at least appears to the Board that Mr. Shearer's termination was not unrelated to his support for the Union, a right protected by the Act.

45. For all of the foregoing reasons, the Board finds that the termination of John Shearer does not appear to be unrelated to the exercise of rights under the Act.

*Irreparable Harm/Significant Labour Relations Objective*

46. From the information and materials before the Board, for the reasons described above, the Board finds that Mr. Shearer was not an inside organizer, but was a known Union supporter. Both Chad Meadus and Aman Ghandi attributed the terminations of Jason Meadus and John Shearer to their support for the Union.

47. The context of this case is important. There are 34 outstanding employee status challenges in the certification application as well as numerous detailed allegations of Employer misconduct in the unfair labour practice complaint. There can be no doubt that the participation of employees both in providing information and testifying as witnesses will be vital to the Union's ability to make out its allegations and support its positions.

48. The facts in this case are unlike *Novotel supra* where 37 employees were signed up as union members after the termination of the employee in question. Nor is it like *K2 supra* where the employee whose reinstatement was sought had only worked two hours for that employer. Nor does the discharge come 18 months from the commencement of the organizing campaign as in *Ontario Lottery supra*.

49. The comments in *K2 supra* at paragraph 35 are apposite. The Board may find irreparable harm "if other employees are dissuaded from supporting the union because they fear they will face similar repercussions from the employer if they do".

50. The declaration of Mr. Ghandi and his responses to the Board's questions make it clear he harbours such fears. It is most likely other rank and file employees will feel the same way. That is in accord with common sense and the Board's experience in such matters. If such a conclusion on the part of employees is not corrected, the Union will suffer irreparable harm in its ability to pursue its case successfully.

51. The Board addressed this issue specifically in the context of employee status disputes in *AXA Electric supra*:

36. In my view, on these facts, it is not unreasonable for employees to have reached this conclusion. I agree with counsel for the union that the period of time between an application for certification and its ultimate disposition is a particularly difficult one for a union in terms of maintaining the confidence of its supporters, in particular when the resolution of disputes requires hearings over a protracted period of time. During this period, those employees may feel that they have had no tangible benefit from supporting the union, and indeed are at some risk for having done so. In the absence of any other apparent justification, as would appear to be the case here, the termination of union supporters in conjunction with a witness who gave evidence adverse to the employer, makes it seem that the risk has been realized. If that perception is not altered through interim relief by the Board, then the union will suffer irreparable harm in terms of erosion of support and ability to obtain evidence for the purposes of the status disputes.

52. The Board came to a similar conclusion in *Cornwall Gravel supra* at paragraph 16 and *Cornerstone supra* at paragraph 39.

53. In *Cooper Industries*, the Board noted that the discharge of an inside union organizer during an organizing campaign "may dry up sources of information necessary to pursue the application, scare off potential witnesses, and influence the results of a representation vote".

54. The same considerations generally apply to the termination of a union supporter, as noted by the Board in *Sarnia Paving Stone supra*:

38. In the case of Pimental and Theriault, I find that the condition has been established. As the Board said in *UPS Supply Chain Solutions Inc., supra*, at paragraph 31, a finding of irreparable harm "is virtually inherent where, as here, the termination of the key inside organizer occurs during an organizing campaign Y". The Board has long recognized that such a termination will not only make other employees hesitant about joining a union, but it would likely interfere with an employee's freedom to support a union in a vote, or to cooperate with and assist the union in its litigation with an employer. Reinstatement would clearly be necessary to mitigate against these effects. The same sentiments would, in my view, be generally applicable to the termination of a known union supporter, particularly where his termination occurs around the same time as that of the key organizer.

55. Likewise, irreparable harm to the Union can result where the perception of employees of a termination of an employee for exercising rights under the Act leads to the erosion of support for the Union and harms the ability of the Union to obtain evidence for a pending unfair labour practice application: *Percon supra* at paragraph 73.

56. Finally, as the Board stated at paragraph 24 of *Almon #1 supra*, the "correction of a reasonable conclusion that may be held by employees that support for the union will lead to a loss of employment is a significant labour relations objective".

57. In this case, the Board is satisfied on the information and materials before it that employees of the Employer may reasonably conclude that the termination of Mr. Shearer was linked to his support for the Union and that if such conclusion is not corrected, that the Union will suffer irreparable harm in its pending certification and unfair labour practice applications. In these circumstances, the interim reinstatement of Mr. Shearer will achieve a significant labour relations objective. Thus, the third element of subsection 98(2) has been met.

#### *Balance of Harm*

58. The Board has described the harm that will result to the Union if Mr. Shearer is not reinstated. What would the harm be to the Employer if he is reinstated on an interim basis?

59. The Employer asserts that it will suffer harm going beyond mere economic or operational harm. The Employer asserts it is concerned about further damage to its machinery and/or a "significant health and safety risk ... to other employees and the public". The Employer also relies on Mr. Shearer's "insubordinate attitude" and his refusal to "following legitimate instructions without a proper reason".

60. The problem for the Employer is that it either has not provided convincing support for its allegations and/or has tolerated the behaviour it now complains about over an extended period of time. There is absolutely nothing before the Board to indicate Mr. Shearer has ever damaged the Employer's machinery, or has ever failed to follow legitimate instructions without a proper reason. Even assuming he had an "insubordinate attitude", such attitude persisted over most of his employment, and never resulted in as much as a written warning.

61. This is not a case where the subject employee failed to give a retirement home resident prescribed medication as in *Princess Gardens supra* or engaged in a pattern of unpredictable, volatile and disruptive behaviour requiring medical treatment as in *Ontario Lottery supra*.

62. There has been no unreasonable delay by the Union in pursuing the interim order application. A 15 day delay from the date of the employee terminations to the date of the filing of the interim order application is not unreasonable, particularly in light of the complexity of the issues raised. The delay is only 2 days longer than the 13 day delay found acceptable in *Value Village supra*. In the context of this case, the timing of the filing of the interim order application does not disentitle the Union to relief.

63. The harm to the Union is very significant, and the Employer has not demonstrated potential harm of any magnitude that it did not tolerate over time, including in the more than a month after the culminating incident. Therefore, the Board is satisfied that the fourth element of subsection 98(2) has been met.

#### **CONCLUSION AND DISPOSITION**

64. The Union has met its burden of proof under section 98 with respect to its request that John Shearer be reinstated to employment with the Employer on an interim basis. All four criteria prescribed by subsection 98(2) have been satisfied. Furthermore, pursuant to subsection 98(3) of the Act, it does not appear to the Board that Mr. Shearer's termination was unrelated to his exercise of rights under the Act.

65. Consequently, pursuant to subsection 98(1) of the Act, the Board hereby orders the Employer to:

- (a) reinstate John Shearer immediately to employment on the same terms and conditions of employment that he enjoyed on January 31, 2011;
  - (b) refrain from suspending, discontinuing or otherwise terminating Mr. Shearer's employment or otherwise changing the terms and conditions of his employment until the Board issues a final decision in the pending unfair labour practice complaint in Board File No. 3795-10-U or until the parties agree otherwise;
  - (c) post a copy of this decision at a location where its employees are likely to see it;
  - (d) post separately a copy of the attached Notice to Employees at a location where its employees are likely to see it; and
  - (e) keep both the decision and Notice to Employees posted for not less than 30 days.
-

**Appendix "A"**  
**The Labour Relations Act, 1995**  
**NOTICE TO EMPLOYEES**

**Posted by order of the Ontario Labour Relations Board**

We have posted this notice in compliance with a direction of the Board, issued after a proceeding in which both the company and the union had the opportunity to make submissions.

The Board has ordered Authentech Communications Canada Inc. to reinstate John Shearer ON AN INTERIM BASIS until the Board considers the reason for his termination. A hearing before the Board will commence soon. A purpose of that hearing is to determine why John Shearer was terminated.

If the Board ultimately determines that John Shearer was terminated for reasons that had nothing to do with his support for the Union, the temporary reinstatement order will be revoked, and the Employer will no longer be required to employ him.

If the Board ultimately finds that his termination occurred because he was a union supporter, exercising his rights under the *Labour Relations Act*, 1995, as amended, the Board may confirm his reinstatement, and direct that he be compensated for all earnings and benefits lost as a result of his termination.

Employees in Ontario have these rights which are protected by law:

An employee has the right to join a trade union of his or her own choice and to participate in its lawful activities.

An employee has the right to oppose a trade union, or subject to the union security clause in the collective agreement with his or her employer, refuse to join a trade union.

An employee has the right to cast a secret ballot in favour of, or in opposition to, a trade union if the Ontario Labour Relations Board directs a representation vote.

An employee has the right not to be discriminated against or penalized by an employer or by a trade union because he or she is exercising rights under the *Labour Relations Act*, 1995, as amended.

An employee has the right not to be penalized because he or she participated in a proceeding under the *Labour Relations Act, 1995*, as amended.

An employee has the right to remain neutral, to refuse to sign documents opposing the union or to refuse to sign a union membership card.

It is unlawful for employees to be fired or in any way penalized for the exercise of these rights. If this happens, a complaint may be filed with the Ontario Labour Relations Board.

It is unlawful for anyone to use intimidation to compel someone else to become or refrain from becoming a member of a trade union, or to compel someone to refrain from exercising rights under the *Labour Relations Act, 1995*, as amended.

**This is an official notice of the Board and must not be removed or defaced.**

**This notice must remain posted for 30 consecutive days.**

**DATED this 17th day of March 2011.**

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**2980-07-U Adhin Sukhu, Applicant v. Ontario Public Service Employees Union, Responding Party v. Centennial College of Applied Arts and Technology, Intervenor.**

*Colleges Collective Bargaining Act – Duty of Fair Representation – Practice and Procedure* – The applicant, an employee of the Colleges, made an application under the *Labour Relations Act* asserting that OPSEU had violated s. 74 – OPSEU and the College submitted that the Board had no jurisdiction to hear the complaint since it was filed under the LRA, rather than the CCBA – Pursuant to Rule 40.5 the Board found it advisable to allow the filing to be amended – There was no purpose in dismissing the application: although it was filed on the wrong form, the obligation on the union is the same and the substance of the complaint would have been the same – Furthermore were the complaint dismissed, the applicant could just file again on the proper form and while the time period lapse would be significant, OPSEU and the College could not point to any prejudice, since they would have known the substance of the complaint – Additionally, notwithstanding a long delay (46 months), the Board found the length of the administrative delay and the resulting waning of memories was not the fault of the Board, rather it was a joint effort of the applicant, the College, the union and the Board – The Board noted that it was the College (not the responding party union) bringing the abuse of process motion, and that it, like most responding parties to litigation, was almost certainly of the view that as long as the applicant was not interested in proceeding with the complaint, it was happy to let it languish – Quite simply, if the College wanted the application to proceed it could have simply written to the Board – Matter continues

**BEFORE:** *Lee Shouldice*, Vice-Chair.

**DECISION OF THE BOARD:** April 5, 2011

1. This is an application filed with the Board pursuant to section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended ("the Act"). The applicant asserts that the responding party union ("the union") has violated section 74 of the Act.

2. The union and the intervenor employer ("the College") raised a number of preliminary objections in their responses. One objection was that the application ought to be dismissed because the Board does not have the jurisdiction under the Act to grant any remedy to the applicant.

3. By decision dated March 21, 2011, I determined that the union and the College were correct when they asserted that the Board has no jurisdiction under the Act to hear this application. However, it appeared to me that it was not necessary to dismiss the application in the circumstances. Paragraphs 7 to 10 of that decision provided as follows:

7. The other preliminary objections have greater merit. The union and the College assert that the Board has no jurisdiction under the Act to hear this application. In my view, they are correct. Subsection 3(h) of the Act provides that the provisions of the Act do not apply to an employee of a college of applied arts and technology. In that regard, subsection 2(1) of the *Ontario Colleges of Applied Arts and Technology Act, 2002*, provides that colleges of applied arts and technology can be created by regulation. Ontario Regulation 34/03 came into force on April 1, 2003. Subsection 2(1) of that regulation establishes the Centennial College of Applied Arts and Technology.

8. The applicant was at all relevant times an employee of a college of applied arts and technology. As a result, the Act has no application to employees of the College. Instead, the applicant's employment with the College was governed by the *Colleges Collective Bargaining Act* in effect at that time (hereinafter the "CCBA").

9. The fact that the Act does not apply to the employment of the applicant with the College does not require that this application be dismissed. Section 76 of the CCBA imposes an obligation upon the union that is similar to that contained in section 74 of the Act. Any complaint that may be brought by the applicant against the union pursuant to section 76 of the CCBA would be filed with this Board pursuant to section 77 of the CCBA. The only difference would be use of a different Board form. If this proceeding were dismissed because the applicant wrongly pleaded reliance upon section 74 of the Act, the applicant could subsequently file a fresh, identical proceeding with the Board alleging a violation of section 76 of the CCBA. It does not appear to me that there is anything to be gained by requiring the applicant to do so.

10. The Board's Rules of Procedure apply to both applications under section 74 of the Act and to applications made under section 76 of the CCBA. Rule 40.5 of those Rules provides that the Board may allow a filing to be amended as the Board considers advisable. For the reasons identified, I would be prepared to amend the application to reflect that it was filed with the Board under section 77

of the CCBA, alleging a violation of section 76 of the CCBA. Other panels of the Board have done so (see *Loyalist College*, 2000 CanLII 9397, August 21, 2000). However, before I do so, the union and the College ought to be given an opportunity to make submissions on that proposed course of action should they choose to do so. Should the union or the College be of the view that there is any reason why I ought not to amend the application as proposed above, it should file submissions with the Board in support of its position. Those submissions are to be delivered to the other parties, and filed with the Board, no later than March 28, 2011.

4. The College delivered submissions to the other parties and filed them with the Board on March 28, 2011. The union did not file any submissions with the Board.

5. The College asserts that this application should not be treated as if it had been made under the CCBA. It relies upon two grounds. First, it states that the Board does not have the jurisdiction to substitute a different proceeding for the one initiated by the applicant. Second, it states that the Board's administrative delay and the resulting prejudice to the College amount to an abuse of process such that the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the resolution of the application if the proceeding were dismissed.

#### **Want of Jurisdiction**

6. The College asserts that the Board draws its jurisdiction in relation to the College from the *Colleges Collective Bargaining Act* and not the Act, since the Act is not applicable to the College. For the reasons set out above, it is right in this assertion. In his submissions, counsel sets out a number of the relevant provisions of the current *Colleges Collective Bargaining Act, 2008*. However, most provisions contained in the latter legislation came into force during October, 2008. The legislation applicable to the assertions made by the applicant is the *Colleges Collective Bargaining Act*, R.S.O. 1990, c. C-15, as amended ("the CCBA"), the predecessor legislation that was in force on December 14, 2007, the application filing date. The relevant provisions of the CCBA are somewhat different than those contained in the current legislation.

7. Both the current legislation and the CCBA contain a provision that speaks to technical defects in applications to the Board. Section 84(2) of the CCBA (which is now section 80 of the current legislation) provides as follows:

No proceedings under this Act are invalid by reason of any defect of form or any technical irregularity and no such proceedings shall be quashed or set aside if no substantial wrong or miscarriage of justice has occurred.

8. Counsel for the College notes that one could argue that this provision of the CCBA might authorize the Board to consider this proceeding to be one filed under the CCBA instead. However, counsel asserts that commencing a proceeding under a wholly different statute is not a defect of form or a technical irregularity. He notes that the application filed by the applicant makes no reference at all to the CCBA, and that it only refers to the Act and to the procedures therein. He asserts that the Board would be substituting a wholly different proceeding under a different legislative regime for the one that was commenced by the applicant, and states that the Board has no jurisdiction to do so. As a result, the College asserts that the application ought to be dismissed for want of jurisdiction.

9. I have considered this argument. At first glance, it appears to be persuasive. However, when considered more closely it proves to be too formalistic in that it fails to consider the effect of the Board's Rules of Procedure which are specifically authorized by the CCBA.

10. In that regard, subsection 82(3) of the CCBA provides as follows:

The Ontario Labour Relations Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions, and the Ontario Labour Relations Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

In fact, the Board has made rules governing its practice and procedure that are, amongst other things, applicable to applications filed with the Board under both the Act and the CCBA. The relevant rule for the purpose of this proceeding is Rule 40.5, which reads as follows:

The Board may allow a filing to be amended as the Board considers advisable.

Also of significance is Rule 1.5(g), which defines the concept of a "filing":

"file" means file with the Board, and a "filing" is anything that is filed

Accordingly, the Board has the authority to allow any application that is filed with the Board to be amended. The only constraint on the Board in making any such amendment is that the Board must consider it advisable to do so.

11. With this in mind, I return to the observations I made in the March 21, 2011 decision above. It did not then appear to me that there would be any purpose served by dismissing this application. The College has filed nothing with the Board to suggest that my initial observation was in error. Any complaint that may be brought by the applicant against the union pursuant to section 76 of the CCBA would be filed with this Board pursuant to section 77 of the CCBA. Accordingly, the applicant has filed his application with the same Board with which he would have filed an application under the CCBA. A different form would have been utilized but it is almost identical to the form actually used by the applicant. The applicant refers to the wrong section of the wrong legislation on the face of the form, but the substance of his complaint would have been the same. Section 76 of the CCBA imposes an obligation upon the union that is worded identically to that reflected by section 74 of the Act, so there is no prejudice to the union or to the College in that regard.

12. If this proceeding were to be dismissed because the applicant wrongly pleaded reliance upon section 74 of the Act, the applicant could subsequently file a fresh, identical proceeding with the Board alleging a violation of section 76 of the CCBA. In the normal course an application filed with the Board more than three years after the relevant events would be dismissed for delay. However, given that the union and the College have been aware of the complaint for that same time period and given that each has filed a response to the applicant's application under section 74 of the Act, a compelling argument could be made for the proposition that the application ought to be permitted to proceed in the circumstances. Quite simply, there is nothing to be gained by dismissing the application so that the applicant can file a fresh application on a marginally different form containing

the very same allegations. The only result of doing so is to increase the costs of all of the parties involved and those incurred by the Board.

13. The application initially filed by the applicant is a "filing" for the purposes of the Board's Rules. Rule 40.5 allows a filing to be amended as the Board considers advisable. For the reasons set out above, and subject to the abuse of process argument addressed below, I consider it advisable to permit the applicant to amend his application to reflect an application made to the Board under section 77 of the CCBA, asserting a violation of section 76 of the CCBA.

### **Abuse of Process**

14. In addition to the argument identified above, the College asserts that administrative delay caused by the Board ought to lead the Board to dismiss this application.

15. The College states that the parties last heard from the Board in March, 2008, 36 months ago, in the context of the cancellation of a previously scheduled Officer's meeting. It states that during that 36 month time period several persons involved in the matter underlying this application have left the employ of the College, including the person who managed the applicant at the time of his dismissal and the individual complainant whose claims led to the dismissal of the applicant. Counsel notes that this specific prejudice is compounded by the general prejudice caused by the normal waning of memories respecting matters that occurred some five years ago. He asserts that the applicant's initial 10 month delay, compounded by the Board's 36 month administrative delay, has resulted in a situation wherein the College has been significantly prejudiced. Counsel states that neither the union nor the College are responsible for any of the delay, and that the application ought not to be permitted to proceed in the circumstances.

16. Counsel also states that, regardless of the Board's administrative delay, the applicant has known since December, 2007 that the union and the College had asserted that the application was not properly filed under the Act. Counsel notes that, notwithstanding that knowledge, the applicant has never filed an application under the CCBA and has never asked the Board to treat his application as if it were filed under the CCBA. If one considers the time for filing a complaint to have commenced in early 2007 after the settlement underlying this application was entered into, counsel asserts that there is an unexplained delay of 46 months that will have accrued if the Board should proceed in the manner identified in the March 21, 2011 decision. The College asserts that the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the resolution of the application if the proceeding were dismissed.

17. I note here that there is one document I have identified in the Board file that does not appear to have been copied to either the union or the College. By way of correspondence dated March 16, 2009, the applicant wrote to the Board Officer assigned to this proceeding to advise that he had not been successful in securing legal assistance and would pursue the complaint on his own. In that same letter, the applicant states that he will be undergoing "a major surgery in April 2009" and would not be available to meet during that month. Otherwise, there is nothing contained in the Board file to explain the delay in the processing of this application. In fact, the next document contained in the Board file is correspondence dated January 28, 2011 from legal counsel now representing the applicant. It does not appear that that lawyer copied the union, the College, or their representatives on the correspondence, as required by the Board's Rules.

18. Although the exact underlying reasons for the delay in this proceeding are largely unknown, it appears to me that some of the delay is likely the result of the applicant's desire to secure legal representation. There is very little information before the Board regarding the efforts, if any, made by the applicant in this regard, or for how long those efforts continued. There is some information before the Board suggesting that the applicant was unavailable for any consultation or meeting in April, 2009, but there is nothing in the Board file to suggest that he was unavailable due to the surgery for any length of time after that month. Finally, as the union and the College both know, litigious matters often manage to resolve themselves over the course of time once the parties have escaped the immediacy of the emotions triggered by the events leading to the litigation and have had an opportunity to consider the situation more objectively. It is possible that the Board Officer was of the view that this proceeding would benefit from the passage of time. That, however, is speculation. One way or another, there is no doubt that this application ought to have been processed by the Board much faster than it has.

19. Notwithstanding the above, I have some difficulty accepting the premises upon which the argument made by the College is based. The specific prejudice asserted by the College is both overstated and somewhat off the mark. Although I accept as fact the assertion made by the College that a number of persons involved in the underlying decision to terminate the employment of the applicant, including two potential witnesses, have left the employ of the College, that fact does not mean that those individuals are no longer available to assist the College. It is not asserted that these individuals have died or have left the province. If it were necessary to secure these individuals to give testimony before the Board, the usual method of securing that testimony could be utilized by the College to ensure these persons attended at the Board to testify.

20. However, it is not at all clear to me that the College will actually be placed into that position if this application is permitted to proceed. In that regard, it is important to ensure that one keeps his or her eye on the proper ball. The focus of the applicant's complaint as filed with the Board is *not* the merits of the underlying decision to terminate. What the applicant complains about is the representation that he was afforded by the union at the arbitration hearing during which a settlement regarding that underlying decision was reached. He asserts a lack of assistance given to him when making the decision to enter into a settlement, and criticizes the advice given to him during that process. With this as the focus of his complaint, the likelihood of hearing evidence from witnesses in a duty of fair representation complaint that speaks to the merits of the underlying grievance is extremely low at best. Accordingly, the inability of the College to secure easy access to certain individuals to assist them in establishing the merits of its position on the grievance is a minor prejudice at best. However, in the unlikely event that the merits of the underlying grievance do become meaningful, the College is required to call evidence regarding the merits, and the delay to date has specifically prejudiced the College, the College can raise the question of the delay with the panel assigned to adjudicate this matter.

21. It is of significance that the party against which the applicant has filed this application, the union, has not asserted any prejudice accruing to it as a result of the delay.

22. The Board is nonetheless left with a long delay that has undoubtedly affected the memories of those involved in the settlement of the applicant's grievance against the College in February, 2007. That is a prejudice that affects the College, the union and the applicant. There can be no doubt that the ability of all parties to address the key facts in dispute will be hampered by the passage of time.

23. I disagree with the assertion made by counsel for the College that the Board is responsible for the delay in question, and that neither the College nor the union is responsible for any of the delay. It is not clear to me that this is so.

24. Each of the College and the union filed its individual response to the application with the Board on December 19, 2007 and January 10, 2008, respectively. At that point, both the College and the union knew what evidence they had secured or needed to secure to defend their positions. They also knew that as time progressed, that evidence would begin to deteriorate. In the normal course, it is the applicant that typically desires an application filed with the Board to be placed before a panel of the Board for a hearing or consultation on the merits as quickly as possible. The named responding parties are almost always brought into the litigation involuntarily, and therefore usually do not press for proceedings to make their way to hearing or to consultation. They are typically content for proceedings to be scheduled for hearing or consultation in the fullness of time.

25. With this reality in mind, there is nothing to preclude a responding party such as the union, or an intervenor such as the College, to request on its own accord that a proceeding be scheduled for hearing or consultation sooner rather than later. As noted above, there can be no doubt that the College would have been aware, once it filed its response with the Board, that the passage of time would corrode the memories of its witnesses, or possibly cause those witnesses to become unavailable to assist it. If the College was at any particular time truly concerned about its potential to establish its position in this proceeding due to the delay in processing it, it ought to have written to the Registrar and asked that this application be scheduled for a consultation. Alternatively, it could have written to the Registrar to insist that its preliminary objections be put before a panel of the Board immediately. As a party to this proceeding it was entirely within its right to do so. Yet it did not take that step. Like most responding parties to litigation, the College was almost certainly of the view that as long as the applicant was not interested in proceeding with his complaint, it was happy to let the application languish. Quite simply, if for any reason the College wanted the proceeding to be dealt with more quickly, all it had to do was write to the Board. It did not do so.

26. Accordingly, although I appreciate that the passage of time has negatively affected the memories of those involved in putting together the settlement in February, 2007, the position that the College finds itself in is as much its own doing as that of any other party, or that of the Board. There can be no doubt that at some point before March, 2011 the Board ought to have unilaterally scheduled this proceeding for consultation or dealt with the preliminary objections raised by the union and the College. It is not clear to me why that was not done. However, the length of the administrative delay and the resulting waning of memories was not the fault of the Board - it was a joint effort of the applicant, the College, the union and the Board. In the circumstances, and for the reasons identified, I do not consider it appropriate to dismiss the application as a result of the delay.

### Order

27. For the reasons set out above, and in particular Rule 40.5 of the Board's Rules of Procedure, I amend the application to reflect that it was filed with the Board under section 77 of the CCBA, alleging a violation of section 76 of the CCBA.

28. This proceeding is referred to the Registrar to schedule one day of consultation before a panel of the Board.

29. I am not seized of this proceeding.
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**1333-10-R** Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Jamwood Developments Inc.; Cinelli Quadra Group Ltd.; Cinelli, Mario in Trust; Cintrex Property Management Inc.; Surrey Construction Inc.; A-Motion Accessible Lifestyle Solutions; A & M Woodworking; Mar Jam Investments Ltd. and Surrey Plaza Limited**, Responding Parties.

**Certification – Construction Industry – Employee – Status –** On the application filing date the individuals at issue worked less than the majority of the day doing the work of a construction labourer, and the remainder of the day they performed non-construction work for the employer at different sites – The Board first noted that the *Gilvesy* test is used to determine which trade/bargaining unit a worker is in on the application date, if there is a dispute about which trade the employee was working on that date – The Board found that the non-construction work performed by the employees in dispute was covered by separate and distinct provisions of the Act, and that in this particular circumstance there was no more reason to have regard to what the employees in dispute did when they left the construction job site to do non-construction work than there would be in the case of employees who were sent home – The Board found the individuals to be employees in the bargaining unit – Matter continues

**BEFORE:** *Charles E. Humphrey*, Vice-Chair.

**APPEARANCES:** *Glen Chochla and Joe Viegas* appearing for the applicant; *Chris Fiore, Mario Cinelli and Carmine D'Allessandro* appearing for Jamwood Developments Inc.

**DECISION OF THE BOARD:** April 6, 2011

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") that the applicant elected to have dealt with under section 128.1 of the Act. The applicant has applied for a province-wide bargaining unit of construction labourers in the industrial, commercial and institutional sector ("ICI sector") of the construction industry and an all sector unit, other than the ICI sector, in Board Area 8. The Board's decision of July 23, 2010 identifies a number of issues in dispute in this application. In accordance with the agreement of the parties, this decision deals only with the status of three persons who the responding party Jamwood Developments Inc. ("Jamwood") listed on Schedule "A" to its response, Boris Libo, Nadia Libo and Kevin Waite. The applicant takes the position those three individuals were not employees in the bargaining unit on the application date July 14, 2010. The applicant claims this is so because the three individuals spent the majority of their working hours on the application date performing work that is not work in the construction industry.

2. The parties provided the Board with the following agreed statement of fact and agreed that this was the only evidence upon which the Board should rely in making its decision:

*Agreed Statement of Facts*

The following facts relating to the status of Mr. Boris Libo, Mrs. Nadia Libo and Mr. Kevin Waite are agreed upon by both the Applicant and the Responding Party.

**Boris Libo and Nadia Libo**

1. Both Mr. Boris Libo and Mrs. Nadia Libo currently are and were at the time the Application for Certification was filed, employees of the Responding Party.
2. Both Mr. Boris Libo and Mrs. Nadia Libo perform various cleaning type functions for the Responding Party both inside and outside the building.
3. Throughout 2010, including July 2010, both Mr. Boris Libo and Mrs. Nadia Libo regularly worked at the jobsite listed in the Application for Certification, 3571-3609 Sheppard Avenue East, Toronto, Ontario.
4. While at the job site, Mr. Libo would be responsible for cleaning up outside of the building, including left over construction material such as wood, paper, metal and concrete that existed as a result of the ongoing construction. While doing this work, Mr. Libo was obligated to wear a hard hat. In addition to cleaning up the site, Mr. Libo would be responsible for changing garbage bags and cutting the grass when necessary.
5. While at the job site, Mrs. Libo would be responsible for cleaning washrooms which the construction workers exclusively used. These washrooms were located in the basement of the building in which the construction was performed. While doing this work, Mrs. Libo was obligated to wear a hard hat. In addition to this cleaning, Mrs. Libo would help her husband Boris clean the debris including left over construction material such as wood, paper, metal and concrete that existed as a result of the ongoing construction.
6. During the time period that the construction was performed on the site, both Mr. and Mrs. Libo regularly spent, depending on the day, approximately 2-3 hours out of an 8 hour work day performing the work described above. The remainder of their day, both Mr. and Mrs. Libo spent performing non construction work at other properties.
7. On the Application Filing Date, both Mr. and Mrs. Libo worked an 8 hour shift. Of the 8 hour shift, for approximately 2-3 hours of that shift, both Mr. and Mrs. Libo performed the work of a construction labourer at the 3571-3609 Sheppard Avenue East project. For the remainder of their respective day, (for approximately 5-6 hours) both Mr. and Mrs. Libo performed non construction work at different buildings in which no construction activity was taking place.

**Mr. Kevin Waite**

8. Mr. Kevin Waite was at the time the Application for Certification was filed, an employee of the Responding Party.

9. Mr. Kevin Waite performed various tasks in his employment relationship with the Responding Party. Depending on the day, he can work with a number of different employees, performing a number of different tasks. Mr. Waite's type of work ranged from cleaning up debris and material, performing maintenance tasks, such as changing light bulbs and fixing toilets as well as a host of other activities.
  10. Mr. Waite would travel from the various properties and sites owned and operated by the Responding Party and perform whatever work was necessary on a given day. As such, he regularly worked on a number of different sites, including the construction site located at 3571-3609 Sheppard Avenue East, Toronto, Ontario. The parties agree that when Mr. Waite was not working at the 3571-3609 Sheppard Avenue East, Toronto, Ontario he was not performing work in the construction industry.
  11. On the day the Application for Certification was filed, Mr. Waite spent approximately one hour performing the work of a construction labourer at the site located at 3571-3609 Sheppard Avenue East, Toronto, Ontario. While on the site, Mr. Waite worked as a construction labourer on the roof of the plaza cleaning and removing construction material and debris. For the remainder of his shift, approximately 7 hours, Mr. Waite performed non construction work at different buildings in which no construction activity was taking place.
  12. For further clarity, the parties agree that the work Mr. Kevin Waite, Mrs. Nadia Libo and Mr. Boris Libo performed when not working on the construction site located at 3571-3609 Sheppard Avenue East, Toronto, Ontario was work not commonly associated with the work of construction employees performed on site within the meaning of s.126 (1) of the Ontario Labour Relations Act.
3. Subsection 13 of Section 128.1 provides that:
- If the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it may,
- (a) certify the trade union as the bargaining agent of the employees in the bargaining unit; or
  - (b) direct that a representation vote be taken.
4. The issue to be determined in this case is whether or not the employees whose status is in dispute were "employees in the bargaining unit" on July 14, 2010.

#### **Parties' Position**

5. The position of the applicant is that Ms. Libo, Mr. Libo and Mr. Waite were not "employees in the bargaining unit". The applicant relies on what is often referred to as the *Gilvesy* test in support of its position. Counsel says that since the employees did not spend the majority of

their work day on July 14, 2010 performing work in the bargaining unit they are not "employees in the bargaining unit" for purposes of this application.

6. Counsel for the responding party Jamwood says that the *Gilvesy* test has no application in the circumstances of this case. Put simply he says that the *Gilvesy* test is intended to apply within the construction industry. That is as a test for determining which bargaining unit/trade an employee is in within the construction industry. The test must be seen in the context of the Board's view that in the case of a construction industry application an employee can only be in one bargaining unit on the application date. The *Gilvesy* test is applied to determine which construction industry bargaining unit/trade the employee is in on the application date. Where the employee has only worked in one construction industry bargaining unit/trade on the application date and performed other work for the same employer outside the construction industry, the *Gilvesy* test does not apply counsel argued. This is so because there is nothing preventing an employee from being found to be in a construction bargaining unit and a non-construction bargaining unit on the same day. The issue of which construction industry bargaining unit/trade the employee was working in, that the *Gilvesy* test is intended to resolve, is not present in the circumstances of this case where the employee's workday involved work that falls within one construction industry bargaining unit and work outside the construction industry.

#### **Legal Background**

7. What is now referred to as the *Gilvesy Enterprises Inc.* test was initially described in the Board's decision in *Gilvesy Enterprise Inc.*, [1987] OLRB Rep. Feb. 220 and in *E & E Seegmiller Limited*, [1987] OLRB Rep. Jan. 41. Prior to *Gilvesy*, the Board in applications for certification in the construction industry had not limited its inquiry to the work performed by the employee on the application date. Rather, the Board in some cases gave consideration to the work performed by the employee during a "representative period" prior to the application date. After the decision in *Gilvesy* the Board has not made use of the "representative period" in determining whether an employee was in the bargaining unit based on the work performed on the application date. The Board in *Gilvesy* described the test and the rationale for the test as follows at paragraph 21:

21. In making our determination, we considered the work performed by the persons whose status was in dispute in these proceedings both on the date of application and during a period prior to that date. However, it appears to us that recourse to a "representative period" has made the certification process in the construction industry less consistent, certain, and expeditious than it might be. The use of any such period is inconsistent with the requirement that a person be both employed by the respondent and at work on the date of application. The very nature of a "representative period" is such that its length will vary according to the circumstances of the particular application and creates uncertainty. Looking to a "representative period" overlooks the fact that once a trade union has been certified as bargaining agent for a bargaining unit of employees of an employer in the construction industry, any collective agreement to which that employer becomes bound, whether a provincial agreement or not, will apply to persons doing the work covered by that agreement. Consequently, whether or not an employee is covered by a particular collective agreement and represented by a particular bargaining agent depends on the work that s/he is doing at the time and is in no way dependent upon the work that s/he performed during any previous period. Further, the use of a "representative period" has tended to result in protracted and expensive proceedings before the Board. Because it is important

that the Board's policies and tests be consistent and create, as certain, equitable, and expeditious a means as possible for ascertaining which persons are in a bargaining unit, and having regard to the nature of applications for certification in the construction industry, we take the view that the Board should eliminate its use of a "representative period" and restrict itself to the following criteria:

- (a) whether the person was employed by the respondent and at work on the date of application; and
- (b) if so, the work that that person spent the majority of his time doing on the date of application; or
- (c) where there is no conclusive evidence with respect to the work that the employee performed on the date of application, any other relevant factor, including the primary reason for hire.

8. The Board in *Wraymar Construction and Rental Sales Ltd.*, [1989] OLRB Rep. June 682 described the Board's view that for the purposes of an application for certification in the construction industry an employee can only be in one construction industry bargaining unit/trade on the application date as follows:

15. While it is possible for an employee to be employed in different bargaining units at different times, s/he can only be in one bargaining unit at any one point in time. As the *Gilvesy* test and that line of cases demonstrates, the Board has concluded that, for construction industry certification purposes, the date of application (which is "the time the application was made" for the purpose of section 7(1)) constitutes a single point in time. Consequently, an employee can only be in one bargaining unit for certification purposes. (As *Harnden & King Construction Ltd.*, [1987] OLRB Rep. Dec. 1510 (at paragraph 14) demonstrates, the Board has also arrived at this conclusion without reference to the *Gilvesy* test or that line of cases.) Pursuant to the *Gilvesy* test, the bargaining unit an employee is in, if any, is the one in which s/he spent a majority of his/her time in on the date of application. The Board is aware that this can result in some apparent anomalies. However, it is also the Board's experience that such anomalies do not arise very often. Further, any test employed by the Board in certification matters will be somewhat arbitrary and create some anomalies, particularly at its edges. The application of the "majority of time on the date of application" test to determine which individuals are employees in the bargaining unit in a construction industry application for certification reflects the Board's attempt to use as certain, equitable and expeditious a means as possible to ascertain who is in such a bargaining unit.

9. In *Al Gordon Electric Limited*, [1990] OLRB Rep. June 637 the Board described the features of the construction industry that inform its approach to determining who is employed in a construction industry bargaining unit as follows:

12. In *Smiths Construction Company*, *supra*, the Board reviewed its general practice of considering only those persons employed in the bargaining unit on the date of application for purposes of making the necessary determinations under section 7 of the Act as follows:

8. The Act requires the Board to ascertain the number of employees in the bargaining unit at the time the application was made. There are no legislated criteria to guide the Board in this task, but, of course, there is really no difficulty in respect of those individuals both employed and working on the application date. The problem arises in respect of individuals who may, in some sense, be considered "employees" but who may not have been at work on the application date and may not return to work for some time thereafter, if at all. Employees on sick leave, maternity leave, long-term disability, workers' compensation, or layoff may fall into this latter category, as do the employees of a firm with a work force which fluctuates from day to day.

9. The construction industry poses special problems. Employment is necessarily transitory. Employees are quite literally "here today and gone tomorrow". A construction project is completed in phases, so on any given day the mix of tradesmen on a site may be different. Moreover, there are always the exigencies of the market, collective bargaining difficulties, the weather, and the proverbial "snafu". Collective bargaining problems, jurisdictional disputes, controlled subcontracting arrangements, the availability of financing, and the disbursement of mortgage monies will effect the level of employment in any given trade at any particular time. So will the weather. A period of intense cold or rain will interfere with construction work and reduce the number of employees on the site until weather conditions improve. Likewise, bottlenecks, problems, or the possibility of missing a time limit or deadline may require the employment of more tradesmen to resolve the difficulties or get the project back "on the rails" even though such employment may only be on a short-term basis. For all of these reasons an employer's complement of employees may vary markedly from day to day so that, in the construction industry, it is very difficult to pin down with any precision those individuals who should be treated unequivocally as "employees" for the purposes of the *Labour Relations Act*. That is why, in the construction industry, the Board need not have regard for any increase in the employer's work force after the application for certification. And, of course, this inevitable fluctuation in the employee complement underlines the importance of the expeditious resolution of applications for certification. If there is any significant delay there will be a real possibility that any certificate ultimately issued will affect employees who were not even there when the application for certification was made. The union's support will have evaporated and bargaining rights will be largely academic. This possibility also exists in manufacturing enterprises but is minimized by the relative stability of employment over the time frame when a certification application is likely to be before the Board. Such is not the case in the construction industry.

10. To cope with these special problems in the construction industry, the Board has developed a particular rule of thumb as to the way in which it should ascertain the number of employees in the bargaining unit at the time the application was made. The Board determines the employee complement to be that which exists on the application date, fully realizing that the number may well be different the day before, or the day after and that, for example, if the application date is a rainy day, the union may find that its members are not at work so that its application may be dismissed. This "rule of thumb" has been accepted and applied by unions and employers in the construction industry for thirty years, and for a very practical reason:

anything else would lead to costly and time-consuming litigation on every certification application causing delay which would severely prejudice the establishment of bargaining rights purportedly guaranteed by the statute. If time is of the essence generally in labour relations, that maxim is particularly true in the construction industry. That is why the Act expressly empowers the Board to issue certificates without a hearing where it considers it advisable to do so, and, as we have already noted, the Board need not have regard for a build-up of the work force after the application is made. Technically, a union may conclude a collective agreement even though there are no employees at the time it is entered into (see section 121), although as a practical matter, if there are no employees, there may be no bargaining leverage to induce an employer to do so.

[emphasis supplied]

### **Decision**

10. The Board has not up to now dealt squarely with the issues raised by this application. The Board in *Darrow Developments Ltd.*, [1987] OLRB Rep. Oct. 1238 was faced with a factually similar situation. The Board did apply the *Gilvesy* test in making a determination that an employee in dispute did not spend the majority of his time performing work in the construction industry. In that case the employee was performing construction labourer's work and non-construction work for his employer on the application date. However, it appears that the parties simply accepted the applicability of the *Gilvesy* test without argument. In the circumstances the case cannot be read as authority for the proposition that the *Gilvesy* test should be applied in this application.

11. The Board in a more recent decision *Frost Refrigeration and Air-Conditioning Inc.* [2007] O.L.R.D. No. 3119 (July 19, 2007) commented as follows at para 40:

40. The *E. & E. Seegmiller* test tied membership in the bargaining unit to an assessment of whether the work performed during the majority of the application filing date was the work of the bargaining unit work, unless this assessment needed supplementing with other factors due to the inconclusiveness of the evidence. When applying the test, it is important to keep in mind that the original purpose of this test was to ensure that the divisions between the so-called construction trades are maintained (see paragraph 6 through 8 of the Board's decision in *Heritage Mechanical*, [1995] OLRB Rep Mar. 272 for elaboration on the Ministerial designations that assign responsibility for specific trades to employee bargaining agencies). ...

12. The context in which this comment was made was in dealing with the issue of how much evidence was required to satisfy the *Gilvesy* test. The arguments and issues that are before the Board in this case were not present in the *Frost Refrigeration*.

13. A review of Board practice and jurisprudence reveals the following. Where an employee is employed performing work in the construction industry the *Gilvesy* test will be used to determine which trade/bargaining unit he or she is in on the application date if there is a dispute about in what trade the employee was working on that day. However if the only work the employee performed on the application day was the work of one trade the amount of time he or she spent performing that work is not a consideration in determining whether or not the employee is employed in the applied for

bargaining unit. For example an employee who performed one hour of construction labourer work on the application date and then went home would be considered to have been an employee in a construction labourers' bargaining unit even though they only worked a fraction of the normal work day on the application date. Likewise, what such an employee does after they leave work is not a relevant consideration in determining whether or not he or she is an employee in the construction industry applied for bargaining unit. For example, if an employee worked as a labourer for one hour on the application date and then left work for some reason and spent the balance of the day doing the work of a construction electrician for another employer, the work as an electrician would not be considered in determining whether or not the employee was an employee in the construction labourer's bargaining unit. The only work that would be considered in determining the employee's status as an employee in the construction labourer's bargaining unit is the work performed as a construction labourer.

14. The Board's position, as described in *Wraymar Construction*, has been that an employee cannot for purposes of an application for certification in the construction industry be an employee in more than one construction industry bargaining unit/trade on an application date. However, an employee can be an employee in a construction industry bargaining unit and an industrial bargaining unit on the same day. The Board in industrial certification applications does not limit employees in the bargaining unit to those actually at work on the application date. Rather generally, in industrial applications the issue is with whether or not there is a subsisting employment relationship as of the application date. Such a relationship may exist even if the employee was not at work on the application date. Given this, it is possible for an employee who normally is employed doing work that would fall within an industrial bargaining unit to work all day performing work in the construction industry for his/her employer and still be included in an industrial bargaining relating to his or her employer in a case where applications for certification for an industrial bargaining unit and the construction bargaining unit were filed on the same day.

15. Given the particular facts of this case the Board sees no principled basis for treating the employees in dispute in this case differently than an employee who left work after one or two hours on the application date. In this case the relationship of the employees in dispute to the construction industry work is indistinguishable from that of an employee who left work early on the application date. We see no difference for this purpose between an employer directing employees to go home because they are not required at a job site and the employer directing them to leave the site and perform work not related to the construction industry at another site. The performance of work not in the construction industry does not result in any conflict with inclusion in a construction industry bargaining unit. The performance of non-construction work does not give rise to a conflict with the Board's approach to holding that an employee can be in only one construction industry bargaining unit/trade on an application date as described in *Wraymer Construction*.

16. We note in this case there is no ambiguity about the division between construction and non-construction work, where and when it was performed. In this case the non- construction work was performed at a site separate and distinct from the site where the construction work was performed. This is not a case where employees were drifting between doing construction and non-construction work on the same site. In a case where such ambiguity existed the symmetry between the position of an employee who goes home and the employee who goes to another non-construction work site would not be present. In circumstances where there was such ambiguity there may be sound policy reasons for reaching a different result from that which the Board has reached in this case.

17. The non-construction work performed by the employees in dispute is covered by separate and distinct provisions of the Act. In the particular circumstance of this case there is no more reason to have regard to what the employees in dispute did when they left the construction job site to do non-construction work than there would be in the case of employees who were sent home. The Board sees no logic or policy based foundation for a finding that an employee who works for two hours performing construction work and is then sent home by their employer is an employee in a construction industry bargaining unit while an employee who works the same two hours doing the same work and is then sent to another job site to do work not in the construction industry is not an employee in the construction industry bargaining unit. The extent of the connection with the bargaining unit is the same for both employees.

18. Having regard to the above, the Board finds that Boris Libo, Nadia Libo and Kevin Waite were employees in the applied for bargaining unit on the application date.

19. This application is referred to the Registrar to scheduling of a hearing to deal with the other issues in dispute.

20. I am not seized with this application.

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**2494-09-R; 2668-09-U Debbie Gibson, Applicant v. Labourers' International Union of North America, Local 247 Ontario Provincial District Council, Responding Party.** Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 247, Applicant v. Scott Environmental Group Limited, George Scott, Debbie Gibson, Donna Sauve, Dan Hamel, Jamie Scott and Steve Mills, Responding Parties.

**Evidence – Practice and Procedure – Termination – Unfair Labour Practice – The employer sought production of notes, which was resisted by the union on the basis of litigation privilege and confidential relationship privilege, taken by a union representative during a meeting, shortly after Dennee (an individual dismissed by the employer) had a discussion with the employer's principal, Scott – Dennee alleged that Scott told him he could get his job back if he could arrange to get all his friends to vote against the union and Scott denied ever asking Dennee to exercise his influence over the other employees – There was no dispute that the notes could constitute cogent and relevant evidence concerning the issues in dispute – On a review of the principles underlying confidential relationship privilege the Board found the key feature was that the communication occur in the context of an employee seeking advice from a union representative concerning an issue to which the union is obligated to give serious consideration – While the meeting between Dennee and the union representatives may have involved a discussion of his dismissal and the possibility of a grievance, the employer was not interested in this information and any references to it may be redacted from the notes – Another possible purpose of the meeting may have been to describe what just occurred in Dennee's discussion with Scott – Given that there was no evidence suggesting that Dennee was seeking advice from the union about how his conversation with Scott might assist him in his termination application (or any grievance), the Board could not see how a confidential relationship privilege existed – The Board found no connection between Dennee's dismissal and the application for**

termination, as they were fundamentally not the same litigation, and accordingly whatever litigation privilege may have existed did not extend to the application for termination of bargaining rights – As neither privilege attached, given the cogency and relevance of the notes, the Board ordered production – Matter continues

**BEFORE:** *Patrick Kelly*, Vice-Chair.

**APPEARANCES:** *Paulette Pommells and Debbie Gibson* appearing for Debbie Gibson et al; *L. A. Richmond, S. Axelson and V. Claro* appearing for Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 247; *Christopher Edwards, Melissa Seal, Kim Connors and George Scott* appearing for Scott Environmental Group Limited.

**DECISION OF THE BOARD:** April 11, 2011

### Background

1. Board File No. 2668-09-U is an unfair labour practice complaint ("the complaint") under the *Labour Relations Act, 1995*, S.O. 1995, c.1 as amended ("the Act"), alleging violations of sections 70, 72, 76 and 87(1) of the Act. It overlaps, to some extent, with an application for termination of bargaining rights (Board File No. 2494-09-R); in that matter, Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 247 ("the union") raised objections under subsection 63(16) of the Act that Scott Environmental Group Limited ("the employer" or "SEG") initiated the application or engaged in threats, coercion or intimidation in connection therewith.

2. This decision concerns a request by counsel for SEG<sup>1</sup> in the course of the hearing of the complaint on January 7, 2011 for production of notes taken by a union representative during a meeting which I will describe in more detail shortly. The union resists the disclosure of the notes on the basis of litigation privilege and/or confidential relationship privilege. I invited the union and the employer to make written submissions concerning this issue, and they have done so. Having considered those submissions carefully, it is my view that the notes should be produced for the reasons that follow.

3. First, some context. The hearing into the complaint had been ongoing over several days when the production issue arose on January 7, 2011. By that date, the employer had presented all its evidence-in-chief, including the testimony of George Scott, SEG's principal, on May 28, 2010, and the union was in the midst of presenting its evidence. Matt Dennee was in the process of testifying on behalf of the applicant. He told the Board about his dismissal from SEG in the summer of 2009.<sup>2</sup> Following his termination that morning he returned to his residence. There he says he made some phone calls on his cell phone. First, he made a call to what he thought was his friend George, but in

<sup>1</sup> Counsel also represents Ms. Sauve and Mr. Scott in the complaint, but for the purposes of this decision, I shall simply refer to him as "counsel for the employer" or "counsel for SEG".

<sup>2</sup> Mr. Dennee's termination is not impugned in this proceeding, and in fact, Mr. Dennee testified that he accepted, and did not grieve, his dismissal following repeated absenteeism/lateness for which he had been progressively disciplined previously.

fact he mistakenly dialed George Scott and then immediately hung up when Mr. Scott answered. Then Mr. Dennee made a call to his union representative, Tony Sousa.<sup>3</sup> In the middle of that conversation, Mr. Dennee realized there was an incoming call to his cell phone, and he took that call, which turned out to be from Mr. Scott. According to Mr. Dennee, Mr. Scott asked if they could meet, and Mr. Dennee invited Mr. Scott over to his house. Mr. Scott came over shortly afterward, and according to Mr. Dennee, Mr. Scott offered Mr. Dennee his job back at SEG if he could arrange to get all his friends at SEG, including his brother, to vote against the union. According to Mr. Dennee, when he inquired how Mr. Scott could arrange to get his job back, Mr. Scott stated words to the effect that, given his prominence in SEG, he alone could decide where to position Mr. Dennee on the seniority list. At that point, the conversation ended. Mr. Dennee gave no commitment to Mr. Scott's request, and Mr. Scott left. However, Mr. Dennee testified that he had no intention of accepting Mr. Scott's offer, and instead decided to take his chances with the union, by which I understood him to mean he hoped to be referred to other employment opportunities with the union's assistance. Mr. Dennee called Mr. Sousa back and arranged to meet with him at a local Denny's restaurant, for the purpose of telling the union what had happened. Mr. Sousa brought with him Steve Axelson, another union representative. According to Mr. Dennee, they took notes of their conversation.<sup>4</sup>

4. Counsel for SEG completed his cross-examination of Mr. Dennee. Counsel for the union declined to ask further questions of the witness in re-examination. At that point, counsel for SEG requested production of the notes, to which the union objected. I directed the filing of written submissions concerning the production request. For reasons that need not be detailed here, I declined counsel for the employer's request to continue with the hearing pending a ruling on the production issue. On the request of the union, I adjourned the hearing at that point. The union has not closed its case on the evidence. It may call further witnesses, including Mr. Axelson.

5. There are discrepancies between Mr. Dennee's version of events and Mr. Scott's. In the course of his testimony in May 2010, Mr. Scott denied ever asking Mr. Dennee to exercise his influence over his co-workers at SEG against the union. Mr. Scott's evidence was that Mr. Dennee called him to express his disillusionment over his dismissal. As I have indicated, Mr. Dennee testified to an accidental call to Mr. Scott followed by a return call by Mr. Scott. Furthermore, concerning whether or not he expressed his disillusionment to Mr. Scott, Mr. Dennee did not recall that, but conceded it was possible. According to Mr. Scott, Mr. Dennee was angling to get his job back. Mr. Dennee denied this when he was cross-examined, but he agreed he was upset, and he also agreed with that portion of Mr. Scott's testimony in which Mr. Scott told Mr. Dennee he could re-apply for his job at SEG in three months time. During Mr. Dennee's cross-examination he testified for the first time that, during his conversation at home with Mr. Scott, Mr. Scott told him that if he provided his résumé he would try to get Mr. Dennee a job at Nortera. When asked by counsel for SEG why he had not provided this evidence earlier in his testimony, Mr. Dennee said he had forgotten. For his part, Mr. Scott denied he made any offer to Mr. Dennee concerning Nortera.

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<sup>3</sup> It was not entirely clear from Mr. Dennee's testimony, but what I took from his evidence is that he called Mr. Sousa to tell him that he had been fired.

<sup>4</sup> According to counsel for the union, the only notes that exist are those taken by Mr. Axelson. The union may still call him as a witness.

### Analysis and Conclusions

6. The parties disagree as to whether the conditions have been established to attract privilege in this case. Counsel for the employer contends that there is no evidence before the Board concerning the dominant purpose for which the notes were made. Furthermore, counsel for SEG argues that, in the course of the parties' oral arguments on January 7, 2011 concerning the employer's request for production of the notes, counsel for the applicant was prompted by counsel for Ms. Gibson et al to lay out the evidentiary groundwork to establish the purpose of the notes, and counsel for the applicant declined to call any such evidence.

7. The union disagrees that it made any choice not to call evidence concerning the circumstances surrounding the creation of the notes, and says it is prepared to do so if the Board deems it necessary. In any event, the union submits that the evidence already established in the hearing suggests that, at the time of the meeting at the Denny's restaurant, the union was contemplating at least two kinds of litigation, a grievance challenging Mr. Dennee's termination (having been informed by Mr. Dennee earlier that morning of his termination) and an application for termination of its bargaining rights.<sup>5</sup> Furthermore, the union points out, Mr. Dennee's testimony establishes that Mr. Scott too was contemplating such an application, otherwise he would not have allegedly asked Mr. Dennee to gather all his friends to vote against the union. Moreover, the union's allegations concerning Mr. Scott's other threats and inducements are said to have occurred in the same time frame as the meeting between Mr. Scott and Mr. Dennee.

8. The employer says that, even if Mr. Axelson's notes attract litigation privilege and/or confidential relationship privilege, the Board still has a discretion to order production because of what is contained in subsection 111(1) and paragraph (e) of subsection 111(2) of the Act, which read:

111. (1) The Board shall exercise the powers and perform the duties that are conferred or imposed upon it by or under this Act.

(2) Without limiting the generality of subsection (1), the Board has power,

(e) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;

9. The union does not dispute that the information contained in the notes could constitute cogent and relevant evidence concerning the issues in dispute. Nor does the union appear to take issue with SEG's argument that the Board has the discretion to order production of Mr. Axelson's notes. In fact, the union offers a number of reasons why the Board should decline to exercise that discretion. Among those reasons, the union points out that counsel for the employer completed his cross-examination of Mr. Dennee unimpeded by the lack of Mr. Axelson's notes. Furthermore, the union submits that the Board will have the benefit of full oral testimony and be in a position to draw

<sup>5</sup> The collective agreement between SEG and the union at the time was on its face less than one year (from December 4, 2008 until August 31, 2009, and in such circumstances subsection 58(1) the Act deems the collective agreement to be in operation for one year from the date of its inception, i.e. in this case until December 3, 2009. The union says that the evidence before me establishes that SEG mistakenly believed that the "open period" period in which a termination application could be filed commenced in June 2009. The employer says the evidence does not establish that the employer was of that belief.

conclusions on the evidence without the notes. The union says there is no denial of natural justice to the employer if the Board declines to order production of the notes.

10. I consider first whether the privilege asserted by the union attaches to the notes. As I have indicated, the union contends there are two bases upon which to claim privilege. First, it says the notes are protected by confidential relationship privilege because they were created in a confidential meeting between a union member and the union's representatives in the aftermath of employment-related discipline, i.e. Mr. Dennee's termination. This privilege, the union submits, is analogous to solicitor-client privilege, and ought to be accorded the same deference by the Board. Secondly, the union says that litigation privilege attaches to the notes in the sense that they were prepared in anticipation of a grievance and arbitration on behalf of Mr. Dennee or a response to a termination application.

11. The decision of the Supreme Court of Canada in *Blank v. Canada (Minister of Justice)*, [2006] 2 S.C.R. 319 is instructive in terms of differentiating between the two types of privilege claimed in this matter. In the *Blank* case, Sheldon Blank and the company of which he was a director were charged with regulatory offences, all of which were quashed. New charges were laid by way of indictment, and these were stayed prior to trial. Mr. Blank and his company then sued the Federal Government in damages for fraud, conspiracy, perjury and abuse of its prosecutorial powers. In support of that litigation, Mr. Blank sought documents related to the stayed criminal prosecution pursuant to the *Access to Information Act* ("the AIA"). The question for the Supreme Court of Canada was whether the litigation privilege under section 23 of the AIA in respect of the documents had expired when the criminal prosecution of Mr. Blank ended.

12. In the course of Fish J.'s analysis on behalf of five of the Justices of the Court, from paragraphs 26 to 33, he distinguishes between solicitor-client privilege or legal advice privilege (from which confidential relationship privilege devolves) on the one hand, and litigation privilege on the other. The former relates to confidential communications between lawyers and their clients in the course of receiving and giving legal advice. The communication need not pertain to litigation. The purpose in protecting those communications from being disclosed to third parties is to ensure access to legal advice and the effective administration of justice. Accordingly, the privilege, once it arises, attaches permanently and absolutely to the communication.

13. By comparison, litigation privilege does not necessarily apply only to confidential communications. It encompasses the gathering of information, which may be in the form of non-confidential and confidential communications, by a lawyer or a non-represented litigant from third parties in relation to pending or apprehended litigation. Its purpose is to create a zone of privacy to facilitate investigation and preparation of a case. Whatever information is gathered under that zone is protected from disclosure to the potential litigant opposite. And it lasts only as long as the litigation does. The purpose behind the privilege is the preservation of the adversarial process, compared to the protection of a relationship which is at the heart of the solicitor-client privilege. But both serve the effective administration of justice, and in that way are complementary.

14. It would appear that the Board has not dealt with the issue of confidential relationship privilege in a written decision, but there is some support for it in the arbitral jurisprudence. The union referred me to *Centre for Addiction and Mental Health* (2004) 133 L.A.C. (4<sup>th</sup>) 178 (Nairn). In that matter, there were three grievances before the arbitrator relating to the discharge of the grievor (a security guard), as well as claims of harassment and inappropriate accommodation of the grievor by

the Centre for Addiction and Mental Health in its dietary area. Those grievances were filed over the period from October to November 2003. The grievor had filed an earlier grievance in February 2003, which also raised issues of harassment and accommodation that was held in abeyance by the parties pending the outcome of the other three grievances. The employer sought production of certain e-mail documents all of which post-dated the February 2003 grievance and pre-dated the discharge in early November 2003. This request was made at a point in the proceeding where it appears there was no evidence yet adduced on the merits of the grievances. Evidence was heard, however, in relation to the motion to produce. Arbitrator Nairn found that most of the e-mails were not arguably relevant, but that some were, including those e-mails between the grievor and the union *which related to the issues raised by his grievances*. With respect to those few arguably relevant grievor-union communications, the arbitrator found that the confidential relationship privilege attached. At page 188, Arbitrator Nairn commented:

... In the labour relations context, employees are often not represented by legal counsel at or in anticipation of arbitration or other quasi-judicial proceedings, but by lay union representatives. In that context communications between a grievor and his union representatives regarding employment issues reflect a strong analogy to a solicitor-client privilege in terms of the interest to be protected. That interest has been described as ensuring the freedom to consult and obtain advice privately and without constraint.

...

... There will be communications between a union and the employees it represents that are not captured by any privilege. However, inherent in the relationship between union representative and grievor is an expectation that communications regarding particular advice as to an employee's rights and obligations under the collective agreement and the strategies to be pursued regarding one's grievances will not be disclosed.

...

... The grievance and arbitration process determines a vast array of legal issues that can have a significant impact on an employee. The element of confidentiality is essential to the proper maintenance of that relationship in order to be able to freely and fully consult. The relationship is one grounded in public policy with the union bearing a statutory duty to properly represent employees for whom it holds bargaining rights. There is no reason to conclude that an employee contemplating or having engaged that process is to be prejudiced by any lesser opportunity to obtain proper and candid advice simply because the union chooses not to retain legal counsel to provide that advice.

Although communications may not be privileged in all situations, it remains the grievor's right to waive any privilege which may attach.

...

15. What I take from the decision in *Centre for Addiction and Mental Health* concerning confidential relationship privilege is the following. Not all communications between a union and bargaining unit members are captured by confidential relationship privilege. The key feature is that the communication occurs in the context of an employee seeking advice from a union representative concerning an issue to which, by virtue of its duty of fair representation of the employee vis-à-vis the employer, the union is obligated to give serious consideration. Most typically, the situation would arise where an employee wishes to explore the possibility of filing a grievance or otherwise assert a right under the applicable collective agreement. The purpose behind the privilege is to permit free

and full consultation, so that the relationship between the member and his or her trade union can be properly maintained. Finally, the privilege belongs to the employee, just as in solicitor-client privilege the privilege is for the benefit of the client. The employee, like the client, may waive the privilege.

16. Mr. Dennee's meeting with Mr. Sousa and Mr. Axelson may have had as one of its purposes to discuss Mr. Dennee's termination and to provide him advice with respect to what the union could do about it in terms of a grievance. The employer, however, is not interested in that subject matter. If it was discussed, any references to such a discussion may be redacted and will not be disclosed to SEG.

17. The other possible purpose of the meeting was for Mr. Dennee to disclose to the union representatives what he claims had just gone on at his house with Mr. Scott. The notes may reflect what he said in that regard. But it is difficult to see how confidential relationship privilege arises in this scenario. For there is no evidence whatsoever that Mr. Dennee sought out the union to gain advice concerning how his account of the conversation with Mr. Scott might be useful in a termination application (or for that matter, in a grievance). In fact, it makes no sense for the thought of a termination application to have crossed Mr. Dennee's mind at that point at all. And since Mr. Dennee has already told the Board his version of events of the interaction with Mr. Scott, and implied to us that that is what he also conveyed to Mr. Axelson and Mr. Sousa, there could be little if any damage to the union-member relationship if the notes recording Mr. Dennee's recounting of the exchange are now disclosed to the employer.

18. I turn next to the issue of litigation privilege. To repeat, the union says that litigation privilege attaches to the notes in the sense that they were prepared in anticipation of a grievance and arbitration on behalf of Mr. Dennee or a response to a termination application. Moreover, the union submits, the fact that no grievance was ever filed and no arbitration hearing engaged concerning Mr. Dennee's termination does not put an end to the litigation privilege because it "is sufficiently elastic to encompass and to continue through multiple related proceedings between the same or related parties." For that proposition, the union relies upon the *Blank* decision.

19. In arriving at the conclusion that the litigation privilege in the *Blank* case had expired, and that therefore Mr. Blank should get disclosure of the documents gathered for the purpose of the indictment against him, Fish J. confirmed that the test in determining whether the privilege should attach is the dominant purpose test. That is to say, for litigation privilege to attach to, say, a document, the dominant purpose in the making or preparation or the gathering of the document must be in respect of litigation pending, apprehended or ongoing. The object of litigation privilege is "to ensure the efficacy of the adversarial process", and it does so by enabling parties "to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure" (paragraph 27).

20. But what litigation is encompassed by the litigation privilege? Fish J. in the *Blank* decision articulated an enlarged definition of litigation, which at a minimum he described as including "separate proceedings that involve the same or related parties and arise from the same or a related cause of action" (paragraph 39). The Court considered the criminal prosecution and the civil action to derive from a different juridical source. Therefore, once the criminal proceeding ended, so did the litigation privilege related to communications in that proceeding.

21. In the instant matter, the union says that the information provided by Mr. Dennee was ultimately used in the termination application rather than in respect of Mr. Dennee's dismissal. The union contends that:

... the same parties are involved arising from the same cause of action, namely the Employer's interference in the origination and filing of the termination application, which arose from a contested certification application in the first place. Essentially, these parties have been in a constant state of litigation for several years.

22. In my view, the union's argument concerning the relatedness of the litigation is not persuasive. The claim of a "constant state of litigation" is, with respect, an exaggerated view of the situation. Applications for certification are very often contested. The application for certification brought by the union against SEG was particularly close in terms of the vote count. But an application for termination does not necessarily arise as a result of or out of an application for certification. In any event, the application for certification was granted on June 10, 2008. Since then, a collective agreement was bargained. No unfair labour practice complaints were filed until this one, and it flows almost entirely from the union's view that the termination application was tainted.

23. The proper focus for the purposes of this issue is the relatedness of Mr. Dennee's dismissal and an application for termination of bargaining rights. Both matters potentially involve the employer and the union, but the termination application was ostensibly initiated by a third party employee with no interest in Mr. Dennee's dismissal. Even if it turns out the employer was behind that application, there is no obvious connection between the two kinds of litigation, which serve quite distinct purposes. Mr. Dennee's dismissal might have been challenged on the basis of just cause, pursuant to the collective agreement between SEG and the union. The dismissal might also have been challenged as an unfair labour practice. Neither option was pursued. The application for termination of bargaining rights, on the other hand, involves completely different issues, namely whether or not there is adequate employee support for ending the union's bargaining rights and, regardless of the support there may have been in the vote for terminating the union's bargaining rights, whether or not the application is tainted by the employer's involvement. I see no connection between Mr. Dennee's dismissal and the application for termination of bargaining rights. It is not fundamentally the same or related litigation. In any event, to the extent that the dominant purpose for taking the notes was to lay the ground work for a discharge grievance, the employer is not interested in that information. The union is not required to reveal those details of the notes. But it does not follow that the litigation privilege extends to the application to terminate bargaining rights by reason of an association between the application and the contemplated grievance.

24. I think it is not possible to conclude that the dominant purpose in taking the notes was in relation to an anticipated termination application. There is no compelling evidence that such a contemplation, in and of itself, was what drove Mr. Axelson to record the conversation with Mr. Dennee.

25. I conclude that litigation privilege does not apply in this matter. If it does apply, the Court in the *Blank* decision seems to suggest at paragraphs 24 and 25 of its decision that litigation privilege is not as absolute a privilege as solicitor-client privilege (and by extension, confidential relationship privilege) and has not necessarily evolved from a rule of evidence to a rule of substantive law, as has solicitor-client privilege.

26. Subsection 111(1)(b) of the Act confers on the Board the discretion to "require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing". As I have indicated, the union concedes that the notes constitute cogent and relevant evidence concerning the issues in dispute. Disclosure of the notes is therefore warranted. There is no need to consider the employer's alternative argument concerning the Board's discretion to accept the notes as written evidence whether admissible in a court of law or not pursuant to subsection 111(2)(e) of the Act.

27. The Board notes the recent request of the parties to adjourn the hearing in this matter scheduled for April 13, 2011. If the reason for that request was due to the lateness of this decision, the parties should be aware that the April 13 hearing date is still available and they may contact the acting Registrar for the purpose of rescheduling. Furthermore, if the parties do agree to convene on April 13, the union must produce a copy of the notes to the employer preferably by 5:00 p.m. on Monday, April 11, 2011, but in any event by no later than 12:00 p.m. on Tuesday, April 12, 2011, so that counsel for SEG has at least some period of time to consider their content. Otherwise, in the event the parties are not in a position to convene on April 13, the union is directed to provide a copy of the notes to counsel for SEG on or before April 15, 2011. To the extent the notes contain any reference to a grievance on behalf of Mr. Dennee concerning his dismissal, including the justness of his termination from employment, those parts of the notes may be redacted by the union.

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28. I note that the parties (that is, the union, SEG, Debbie Gibson, Donna Sauve, plus an individual, David Levee who is not a party in these matters) are now engaged in another unfair labour practice complaint in Board File No. 3494-10-U. I will be dealing with that matter if it proceeds to a hearing. There is currently an issue between the parties concerning a particular portion of the union's pleadings that I will have to determine at some point. In my view, the hearing should not be scheduled until a final decision in this proceeding issues. However, perhaps one or more of the parties disagree. In that case, they must file and deliver their written reasons within ten (10) days of the date of this decision, citing Board File No. 3494-10-U.

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**1468-08-R; 1727-08-U Universal Workers Union, Labourers' International Union of North America Local 183, Applicant v. Parkview Excavation Services Inc., 1494282 Ontario Inc. and 1490623 Ontario Inc. o/a Parkview Homes, Responding Parties.**

**Construction Industry – Discharge – Unfair Labour Practice –** The Union brought an application alleging that the discharge of three individuals on the date of application for certification contravened sections 72 and 76 of the Act as it was motivated, at least in part, by anti-union animus – Parkview took the position that one of the employees had been properly terminated at the end of his three month probationary period because he had difficulties performing some of the tasks equipment operators are required to perform – Parkview also presented evidence regarding its financial difficulties – Once the operations manager decided he would lay off two construction labourers in order to meet the need to reduce costs, he decided to terminate them the same day as the third individual, as he believed this would have less impact on the morale and productivity of the remaining workers – The applicant claimed that the

operations manager's explanations were not credible, considering that there was no probationary period in place, and that the cost savings achieved were minimal compared to the financial difficulties the company faced – Furthermore, the employees were, contrary to past practice, laid off mid-week rather than at the end of the week – Finally, the operations manager was aware that an organizing campaign was underway and that the applicant had met with the excavating crew the day before the termination took place – The Board determined that Parkview had met the burden of proof to demonstrate that its decision to terminate the employees in question was not contrary to the Act – While the timing of the termination is very suspicious, there was no evidence of anti-union behaviour or that Parkview had reacted to the organizing efforts of the applicant in any illegitimate way – Given the operations manager's uncontradicted testimony and the failure to cross-examine him on this point, the Board refused to draw the inference that because the operations manager was aware that there had been a union meeting the day before the terminations, he knew the employees had signed cards during the meeting – Parkview's evidence was complete, consistent and credible, and was not contradicted by the applicant – Finally, Parkview would have had no basis for knowing or even suspecting that the applicant was filing the application for certification the day the dismissals took place – That decision had been made by the applicant's co-ordinators the evening before and they had not informed any Parkview employee – Application dismissed

**BEFORE:** *Harry Freedman*, Vice-Chair.

**APPEARANCES:** *Sean McFarling and Doug Serroul* for the applicant; *John-Paul Alexandrowicz, Paul Dietrich and Paul Peterson* for the responding parties.

**DECISION OF THE BOARD:** March 24, 2011

1. The Board in its decision dated December 18, 2008 referred these two applications to the Registrar to be listed for hearing together. Board File No. 1468-08-R is an application for certification under the construction industry provisions of the *Labour Relations Act*, 1995, S. O. 1995, c. 1 as am. (the "Act") the applicant elected to have dealt with under section 128.1 of the Act. The application for certification was filed on August 7, 2008.
2. The applicant seeks relief under section 96 of the Act in Board File No. 1727-08-U in relation to the three individuals (Harry Kuypers, Aaron Palmer and Evan Wash) who had their employment terminated on the date the application for certification was filed.
3. When the hearing began the parties agreed to deal first with the application in Board File No. 1727-08-U on the understanding they would adduce evidence relevant to the unfair labour practice proceeding but that any such evidence that was also relevant to the certification proceeding would be applied to that proceeding. This panel of the Board is seized with the certification application. I note in that regard the applicant indicated it intended to seek relief, if necessary, under section 11 of the Act in the certification proceeding.
4. The parties also agreed the three responding parties (Parkview Excavation Services Inc., 1494282 Ontario Inc. and 1490623 Ontario Inc. o/a Parkview Homes) ("Parkview") are, for purposes of these two applications one employer carrying on business as Parkview Homes.

5. The issue in the section 96 application is whether the dismissal of Mr. Kuypers and the lay off of Messrs. Palmer and Wash contravened sections 72 or 76 of the Act. The applicant asserts Parkview's decision to dismiss Mr. Kuypers on Thursday August 7, 2008 and lay off Messrs. Palmer and Wash on that same day was motivated, at least in part, to thwart the applicant's attempts at organizing Parkview's employees. That is, the applicant asserts Parkview's decision, and in particular, the timing of its decision to release Messrs. Kuypers, Wash and Palmer from employment was tainted by anti-union animus.

6. The Board heard testimony from three witnesses called by Parkview and one witness called by the applicant over the course of seven days of hearing beginning January, 2009 with final argument presented in March, 2011.

7. Parkview is engaged in land acquisition, residential subdivision development and construction of single family houses and condominium buildings in the Peterborough area. It has carried on business in the Peterborough area for some 25 years.

8. The 2008 building season was particularly difficult for Parkview. It faced a significant downturn in sales and revenue compared to previous years as a consequence of the uncertainties in the housing markets in the United States and Canada at that time.

9. Paul Peterson, Parkview's operations manager was responsible for the construction activities undertaken by Parkview, including the individuals employed by Parkview to perform construction work at their projects.

10. Mr. Peterson, before joining Parkview as its operations manager, had owned and operated an automotive parts manufacturing facility for a number of years. When he sold his manufacturing business he first began a residential contracting business and then was hired by Parkview. As the operations manager, Mr. Peterson was the individual who made the decisions on behalf of Parkview about the hiring, discipline, layoff and discharge of their construction employees. Mr. Peterson reported to Paul Dietrich, one of the owners of Parkview. Mr. Dietrich had delegated considerable authority to Mr. Peterson with respect to the operational elements of the business. While Mr. Peterson made the decisions about the day to day operational aspects of Parkview's business, he regularly consulted with Mr. Dietrich and kept him informed about what was taking place.

11. Mr. Peterson had hired Mr. Kuypers as an equipment operator to work on a large excavating machine as of May 6, 2008 after Mr. Peterson had terminated the employment of another equipment operator due to performance issues. Mr. Kuypers signed a six page employment contract form presented to him by Mr. Peterson. That employment contract form did not say anything about Mr. Kuypers passing through a probationary period but Mr. Peterson in his testimony said he and Mr. Kuypers had discussed a three month probationary period when Mr. Kuypers was hired.

12. Mr. Wash and Mr. Palmer were employed by Parkview as construction labourers. They too had signed a similar six page employment contract form when they were hired. Mr. Palmer had worked for Parkview for approximately two years before he was laid off in August. Mr. Wash had been hired by Mr. Peterson in June 2008. Prior to being employed by Parkview, Mr. Wash had worked for a subcontractor framing crew. When that subcontractor's work for Parkview was winding up, Mr. Peterson, who knew Mr. Wash from the work he had been doing on Parkview's job sites,

hired him to work with an excavating crew to do manual grading on their sites using a rake, shovel and wheelbarrow.

13. Parkview had been aware of organizing activities carried on by the applicant in early 2008 and continuing in July and the beginning of August 2008. Mr. Peterson explained he had been told by his contracts manager that union organizers had been visiting Parkview's job sites. He said in his examination in chief he had been advised by one of his site superintendents and by the contract manager in April that union organizers had returned to Parkview's job sites. He said he did nothing in response to that information because as far as he was concerned an employer cannot interfere in the process. He testified in his examination in chief that workers have a right to organize under the law. Mr. Peterson went on to say that when he learned the union had been more active he told his supervisors they had to be very careful in dealing with employees who might come to them with questions about the union. He said he was concerned about employees asking "trick questions" in order to provoke a "Wal-Mart" type of situation. Mr. Peterson explained he told his supervisors they were not to interfere in the process and to be careful and quite guarded in responding to questions. He said he told those supervisors that if employees asked them if the company would close if the union came in they had to answer no and refer the questioners to him for more information. Mr. Peterson was adamant that he instructed his supervisors they were not to interfere with the employees dealing with the union, but he also said he told the supervisors if union organizers were actually on one of Parkview's work sites, they could be asked to leave the site.

14. Mr. Peterson also testified that he never asked the people who told him about the union organizers whether they knew who had been speaking to the union organizers. Mr. Peterson said he was never told who was a union supporter and did not know which employees had signed cards.

15. During a vigorous cross-examination, Mr. Peterson confirmed he knew about union activity taking place in January and July at Parkview's jobs but also said he did not discuss union activity with his supervisors during supervisors' meetings. He said he had told the supervisors they were not to interfere. He candidly acknowledged it was his preference that Parkview operate without a trade union representing its employees because without a union he had greater freedom to manage his operations. His testimony about his "hands off" approach to the union organizing activity was not shaken during his cross-examination.

16. Mr. Peterson was asked in his cross-examination if he had been told by Brian Walden, an equipment operator and excavation supervisor, that on August 6<sup>th</sup> a union organizer had met with some of the employees on the excavating crews to solicit support. He candidly answered that he had been told some employees had met with a union organizer. After giving that answer, he was not asked if Mr. Walden had told him which employees had met with the union organizer and if any of them had signed cards.

17. The decision to dismiss Mr. Kuypers and lay off Messrs. Wash and Palmer on August 7<sup>th</sup> was made by Mr. Peterson. Mr. Peterson explained Mr. Kuypers was dismissed because he had had a great deal of difficulty in excavating flat basements. He said Mr. Kuypers was very good at operating the shovel to load dump trucks but could not excavate the basements properly. Mr. Kuypers worked with a grade man when excavating the basements. Mr. Walden had reported the problems Mr. Kuypers was having with basement work to Mr. Peterson. Mr. Peterson testified that when he hired Mr. Kuypers he knew that Mr. Kuypers was not experienced with basement work but thought with time he would be able to get it done correctly. Mr. Peterson had Mr. Walden work with Mr. Kuypers

as the grade man when he learned about the difficulties Mr. Kuypers was having. Mr. Peterson said he wanted to be sure the problems Mr. Kuypers was having with excavating basements were not caused by the grade man that had been initially assigned to work with Mr. Kuypers. Mr. Walden reported there was no improvement.

18. Mr. Peterson also explained that not only had Mr. Walden expressed concern about the ability of Mr. Kuypers to excavate basements properly, he had received several complaints from the principal of the subcontractor that was doing the concrete footings and foundations for Parkview. That subcontractor had started to back charge for the extra work that had to be done as a result of the inadequate excavation work carried out by Mr. Kuypers.

19. As a result of the poor quality of basement excavation work done by Mr. Kuypers, Mr. Peterson decided in late July that he would have to find another shovel operator and dismiss Mr. Kuypers when he found someone to replace him. Mr. Peterson had planned on terminating Mr. Kuypers on a Friday, but when Mr. Peterson reviewed Mr. Kuypers' employment file he realized Mr. Kuypers had started work three months earlier and that his three month probationary period expired on August 7<sup>th</sup>. As a result he decided to effect the termination of Mr. Kuypers on that Thursday morning. Mr. Peterson explained he believed Mr. Kuypers could be terminated without notice during his 90 day probationary period, but if he had waited until Friday, he would have had to have given him a week's notice.

20. The applicant subjected Mr. Peterson to an intense cross-examination about the reasons he had for dismissing Mr. Kuypers and the timing of his termination. Mr. Peterson maintained Mr. Kuypers was a good excavator for some of the work he was required to perform but was simply not good with the precision work he had to carry out when doing basements. He explained that he finally had made the decision to dismiss Mr. Kuypers on August 1<sup>st</sup> and said he had to effect that decision by August 7<sup>th</sup> at the latest because that was when Mr. Kuypers' probationary period ended. Mr. Peterson acknowledged there was work available for Mr. Kuypers on the Thursday and Friday of that week, but he had him leave because he did not want to have him work beyond his probationary period.

21. When the applicant confronted Mr. Peterson with the fact that there was no probationary period in the written contract of employment between Parkview and Mr. Kuypers and that contract required 30 days' notice be given, Mr. Peterson said he had not realized there was a 30 day notice provision in the contract and also thought a three month probationary period was the law. He also said that he did not want to take the position Mr. Kuypers was terminated for cause because he did not want to go through the hassle of proving cause so thought it best to dismiss him before his probationary period expired.

22. Mr. Peterson was also asked why he had not just given Mr. Kuypers, and Messrs. Wash and Palmer working notice. The applicant had Mr. Peterson confirm it was his usual practice when effecting a lay off to notify employees of their lay off at the end of the week. Mr. Peterson, while conceding he knew about the meeting some employees had had with a union organizer, denied the suggestion put to him by the applicant that he chose to terminate Mr. Kuypers and lay off Messrs. Wash and Palmer so he would not have to deal with the union. Mr. Peterson was adamant he had had no idea who wanted the union and said his only indication of which employees supported the union was based on the union's challenges to the list in the application for certification.

23. The selection of Mr. Wash and Mr. Palmer for lay-off was explained by Mr. Peterson. Mr. Wash was the most junior labourer. As for Mr. Palmer, while he was more senior than another labourer, Jordan Hynes, Mr. Peterson understood Mr. Hynes could also work as an equipment operator while Mr. Palmer did not have those skills. Mr. Peterson explained in cross-examination that Mr. Palmer's skill set was limited. Mr. Palmer had been laid off and recalled in the past in accordance with the work available. Parkview had subsequently recalled Mr. Palmer to work and had also asked Mr. Wash to return but he never did so.

24. Parkview established that it was being pressured by its bank to reduce costs during the summer of 2008 because sales and revenues had diminished significantly. Parkview called a good deal of detailed evidence about revenues, sales and expenses. The applicant did not seriously challenge the assertions that revenues had dropped, but contended the savings that resulted from the lay off of two construction labourers for several weeks could not have had any material impact on Parkview's financial situation.

25. Greg Landry, Parkview's financial comptroller, testified about the deteriorating financial situation that began in the spring. He explained he started to raise concerns that Parkview's operating capacity was exceeding its requirements. Simply put, Parkview had employees and equipment to build houses but the houses were not selling so Mr. Landry advised Parkview's owners there was a need to reduce costs by making cuts to discretionary spending and reducing staff. Those discussions between Mr. Landry and Mr. Dietrich began in late spring and continued with Mr. Landry alerting Mr. Peterson in June or early July that action had to be taken soon to reduce staffing levels.

26. Mr. Landry explained that Mr. Peterson had advised him at the beginning of August staff could be cut to meet the demands for cost reduction. Mr. Landry testified Mr. Peterson decided who would be let go in response to his directions that staff reductions were necessary. Mr. Landry agreed in cross-examination that it was unusual for lay offs to take place during the week as they were normally done on a Friday. He also conceded he was aware Mr. Peterson knew members of the excavation crew had met with the union on August 6<sup>th</sup> and the lay off of Messrs. Wash and Palmer and the termination of Mr. Kuypers occurred the next day.

27. Mr. Peterson had testified that once he had decided he would lay off two construction labourers in order to meet the need to reduce costs he initially thought he would notify them of their lay off on that Friday. When he realized Mr. Kuypers' 90<sup>th</sup> day of work was that Thursday he determined the termination of Mr. Kuypers and the lay off of Messrs. Wash and Evans should take place the same day. He said terminating or laying off employees was always difficult but because it had to be done he wanted to have what he considered a difficult task done once.

28. Mr. Peterson maintained during his cross-examination that he wanted all three individuals to be let go at the same time because he felt if it was done all at once it would have less impact on the morale and productivity of the remaining staff. He said his belief was these sorts of difficult decisions had to be carried out quickly which is why, when he discovered Mr. Kuypers was at the end of his probationary period, he decided he would terminate Mr. Kuypers and lay off Messrs. Evans and Wash at the same time.

29. Mr. Peterson instructed Mr. Walden to inform Mr. Kuypers about his dismissal. Mr. Peterson met separately with Mr. Wash and Mr. Palmer before they began work on August 7<sup>th</sup> to notify each of them they were being laid off because work had slowed down due to a drop in sales.

He said he told them they would be recalled once more work became available. Mr. Peterson said Mr. Wash had advised him he'd be going back to school while Mr. Palmer did express surprise when he was told he was being laid off. Mr. Peterson said neither Mr. Wash nor Mr. Evans had suggested he had laid them off because they had joined the applicant.

30. Parkview also had Mr. Dietrich testify about what had taken place. Mr. Dietrich confirmed he had been told by Mr. Peterson that Mr. Kuypers was let go because of problems with his work. He explained his approach to managing the business is to delegate authority to his managers and when they report problems to him to ask them for the solutions they recommend to the problems they faced. Mr. Dietrich was also well aware of the financial situation confronting Parkview. He described it as "dire" because the sales volume they normally had in the fall and spring had dropped significantly. During his cross-examination, Mr. Dietrich confirmed that Mr. Peterson was responsible for making the decisions relating to Parkview's operations, including terminations and lay offs.

31. Mr. Dietrich acknowledged he had heard about union activity taking place at Parkview's work sites on a number of occasions over the years, but said he had no actual knowledge of any union organizing activity going on in July or August of 2008 before the application for certification came to Parkview's attention. Mr. Dietrich testified he did not know whether Mr. Peterson was aware of any union activity because if Mr. Peterson did know, he did not advise him about it until after the application for certification had been received by Parkview.

32. Mr. Dietrich had also confirmed the lay offs of Messrs. Wash and Palmer were caused by the need to reduce costs. He pointed out Parkview had not only reduced its construction field staff, it had also had lay offs in its supervisory and finance areas. Mr. Dietrich was adamant in his evidence that the timing of the lay offs of Messrs. Wash and Palmer and the termination of Mr. Kuypers was Mr. Peterson's decision. He did not know when they would take place, but only that there was a need to reduce staff and dismiss Mr. Kuypers. Mr. Dietrich said the first time he knew about any specific organizing activity taking place was when Mr. Peterson had informed him by e-mail about the application for certification being delivered. Mr. Dietrich said he learned about the certification application while he was travelling to Halifax.

33. Danny Mazzotta, one of the applicant's organizers testified that he and Donny Davis, another of the applicant's organizers had undertaken a campaign among Parkview's employees in July and early August at the direction of the applicant. Mr. Mazzotta was the only witness called by the applicant. He explained other organizers had made contact with Parkview's employees earlier in 2008 and had achieved some success. Mr. Mazzotta and Mr. Davis had attended at Parkview's sites together or on their own some eleven times between July 17<sup>th</sup> and August 6<sup>th</sup>. They did not have any employees agree to sign membership cards until August 6<sup>th</sup> when a number of employees joined the applicant during the day and into the evening. Mr. Mazzotta said that on some of their visits they did not speak to employees but did have occasion to meet and speak with construction labourers and equipment operators on four of those eleven visits, and on one of their other visits they went to Parkview's sales office and spoke with a sales person.

34. Mr. Mazzotta testified he and Mr. Davis had succeeded in persuading several employees to join the applicant on August 6<sup>th</sup>. No one had signed a membership card before that date, although some employees had told them earlier they were interested and actually supported the applicant but were not ready to actually join. Mr. Mazzotta and Mr. Davis believed, based on the information they

had acquired during their visits to Parkview's sites, they had obtained membership evidence from a sufficient number of employees to file an application for certification with membership evidence from more than 55% of the bargaining unit employees by the time they returned to the applicant's offices in Toronto on August 6<sup>th</sup>. On August 7<sup>th</sup>, the date the application for certification was filed, the applicant's organizers went to the job sites to observe what work was taking place and who was working. It was that morning they learned about the termination of Mr. Kuypers and the lay off of Messrs. Wash and Palmer.

35. The decision to apply for certification on August 7<sup>th</sup> was made late in the day on August 6<sup>th</sup> by the applicant's co-ordinators. Mr. Mazzotta said he and Mr. Davis had brought the evidence and information to the applicant's offices on August 6<sup>th</sup> and based on that information the decision was made to apply for certification on August 7<sup>th</sup>. According to Mr. Mazzotta, the decision to file the application for certification on August 7<sup>th</sup> was made by the individuals to whom Messrs. Mazzotta and Davis reported. Once the decision was made to apply for certification, the applicant assigned Messrs. Davis and Mazzotta, together with six other representatives to go to Parkview's work sites on August 7<sup>th</sup> to observe and record who was working and what work was taking place in order to be in a position to ensure it knew and could prove which employees were at work in the bargaining unit for which they were seeking certification.

36. The applicant contends the timing of the lay off of Messrs. Wash and Palmer and the termination of Mr. Kuypers was designed to frustrate the applicant's organizing efforts. It submits Mr. Peterson's explanations implementing the termination and lay off are simply not credible. It argues that on close examination, his explanations make no sense because there was no probationary period in respect of Mr. Kuypers, Messrs. Wash and Palmer were laid off mid week rather than at the end of the week, there was still labourers' work that had to be done on the inventory homes Parkview was building and the cost saving achieved through their lay off was relatively insignificant compared to the magnitude of Parkview's financial difficulties.

37. The applicant refers to Mr. Peterson's awareness that an organizing campaign was underway and to the fact that he knew the applicant had met with the excavating crew on August 6<sup>th</sup>. Although Mr. Peterson said he did not know the applicant had signed up employees on that day Mr. Peterson was told by one of the employees there had been a meeting with the union. The applicant suggests it strains credulity to accept that Mr. Peterson was unaware that employees had signed cards. The applicant submitted that surely an employee telling his boss about a union meeting would also tell him that cards were signed.

38. While the applicant does not dispute that Parkview's sales and revenues were lower than in previous years, it submitted Parkview tried to come up with an after the fact rationalization for the lay offs and termination. There was work that still had to be done with respect to inventory homes. It suggests an experienced home builder would know well in advance what work was required so that the recall of the labourers a few weeks later, after the unfair labour practice complaint was filed, is further evidence that cost cutting was just a pretext for getting rid of some of the applicant's supporters at a critical time in its organizing campaign.

39. The applicant argued Parkview has the onus under section 96 of the Act to demonstrate its decision was not tainted by a desire to stymie the applicant in its attempt at organizing its employees. The applicant contended the timing of the termination and lay off was far too convenient and coincidental and therefore must have been motivated, at least in part, by anti-union animus.

40. The applicant urged the Board to examine the testimony of Parkview's witnesses, and in particular, the evidence given by Mr. Peterson from the perspective the Board has developed in these sorts of cases over the past 40 years, having regard to the burden of proof imposed on Parkview by section 96(5) of the Act to prove its conduct was not contrary to the Act. The applicant referred to a number of Board decisions that discuss the analysis the Board undertakes when assessing an employer's explanations for action taken against employees during a union's organizing campaign.

41. The principles the Board has applied in assessing an employer's justification for conduct alleged to be contrary to the Act have been repeated many times in numerous decisions. The approach discussed by the Board in *Classic Masonry Inc.*, [1993] OLRB Rep. Aug. 721 remains applicable today. The Board wrote in that case at pages 730-31, after referring to what is now section 96(5) of the Act:

57. The burden of proof is therefore on the responding parties to show, on the balance of probabilities, that the layoff of the grievors was not related to union activity or motivated by anti-union animus.

58. In *Fielding Lumber Company Limited*, [1975] OLRB Rep. Sept. 665 at page 673 the Board explained the burden of proof in the following terms:

Having regard to section 79(4a) [now section 91(5)] a respondent employer must satisfy the Board that in taking the actions it took it was in no way motivated by a grievor's union activity. Thus the Board may not find that an employer's sole reason for acting stems from the union activity of his employees to find a violation of legislation but rather an employer must satisfy the Board that the union activity played neither a major or minor role in regard to its impugned actions.

59. In assessing whether the respondent's actions were a violation of the Act we must look to all the circumstances surrounding the layoffs. An examination of all the circumstances is not to determine whether there is just cause for the layoffs, whether the layoffs were "fair" or "unfair" in some objective sense, or whether there was a legitimate business justification for the layoff. Rather our task is to determine whether the layoffs were motivated in whole or in part by the employees' union activity or by their exercise of rights conferred upon them by the Act. The Board, with judicial approval, has held that if an employer's actions are motivated, even in part, by anti-union considerations, the employer is in violation of the Act, notwithstanding existing legitimate business reasons (*Westinghouse Canada Limited*, [1980] OLRB Rep. Apr. 577, affirmed by the Divisional Court 80 CLLC ¶14,602)

60. In appropriate cases conduct which is arbitrary, precipitate, unreasonable or extraordinary given the employer's previous practice may lead to an inference of anti-union animus. The Board has long accepted that in a contested unfair labour practice complaint one would not normally expect a respondent to openly or candidly admit that its conduct or actions were in contravention of the Act. For this reason, in cases where layoffs take place in the shadow of the union's organizing campaign the Board carefully scrutinizes the conduct and actions and surrounding circumstances to determine if the "true" or "real" motive, or one of the motives for the layoffs was tainted by anti-union animus. The Board is

required to draw its conclusions about the motivation underlying the respondent's actions and in so doing must necessarily draw inferences from the evidence and must inevitably assess the credibility of the witnesses called by the respondents.

61. The analysis the Board uses in making the determinations it must make has been set out in numerous cases and was succinctly summarized in *Alpha Laboratories Inc.*, [1981] OLRB Rep. July 823 at 824:

In the *Barrie Examiner* case, [1975] OLRB Rep. Oct. 745, the Board stated:

... the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts. First, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred.

It is not the function of the Board in the present case to decide whether or not the respondent had just cause to discharge the grievors. Our jurisdiction is limited to determining whether the respondent discharged the grievors because they were supporters of the complainant trade union or were exercising any other rights under the Act (see *Toronto Star Limited*, [1971] OLRB Rep. Sept. 582, paragraph 11). This does not, however, preclude the Board from considering the context surrounding the respondent's actions, as indicated by the Board in *Fielding Lumber Company* [1975] OLRB Rep. Sept. 665, at paragraph 19:

The Ontario Labour Relations Board has no general mandate to impose its views of fairness on employers and employees. Its sole responsibility is to administer and enforce The Labour Relations Act - a piece of legislation that does not stipulate that an employee can be terminated from his employment only for just and reasonable cause. But having said this it must be observed that in assessing an employer's declared motivation due regard may be had to the peculiarities of the context surrounding an employer's actions. To the extent that peculiarities exist and cannot be reasonably explained an employer may fail, by a process of inferential reasoning, to satisfy the burden placed upon it.'

The nature of the determination to be made in cases such as the instant case and the factors to be considered by the Board in making such determinations are described as follows in *Pop Shoppe (Toronto) Limited*, [1976] OLRB Rep. June 299, at paragraph 5:

In cases such as these the Board is very often required to render a determination based on inferential reasoning. An employer does not normally incriminate himself and yet the real reason or reasons for the employer's actions lie within his knowledge. The Board, therefore, in assessing the employer's

explanation must look to all of the circumstances which surround the alleged unlawful acts including the existence of trade union activity and the employer's knowledge of it, unusual or atypical conduct by the employer following upon his knowledge of trade union activity, previous anti union conduct and any other 'peculiarities'. (See *National Automatic Vending Co. Ltd.*, 63 CLLC ¶ 16,278).....

62. In the *Pop Shoppe* case, *supra* the Board went on to state that in assessing the circumstances in order to determine whether the conduct was unlawful the Board "... must not be unduly swayed by either the co-existence of unfair treatment or by the co-existence of legitimate reasons for the employer's conduct." (*Pop Shoppe*, *supra* at page 301). Similarly, in the *Barrie Examiner* case, *supra* at paragraph 17 the Board wrote

... the appearance of a legitimate reason for discharge does not exonerate the employer, if it can be established that there also existed an illegitimate reason for the employer's conduct. This approach effectively prevents an anti-union motive for masquerading as just cause.

42. There is no doubt that the timing of the termination of Mr. Kuypers and the lay off of Messrs. Palmer and Wash is very suspicious. Is it a mere coincidence that Mr. Peterson decided to effect the termination of Mr. Kuypers the day after the union obtained membership evidence from Parkview's excavation crew? Parkview argues the applicant has failed to lead any evidence Parkview knew or was even aware some employees had joined the applicant on August 6<sup>th</sup>. Parkview certainly could not have known the application for certification was being filed on the day Mr. Kuypers was terminated and Messrs. Palmer and Wash were laid off.

43. The evidence does establish Parkview had had legitimate concerns for some time about the quality of Mr. Kuypers' work in connection with the excavation of basements. Moreover, there was no doubt Parkview was also facing serious financial issues with its banker putting pressure on it to cut costs in light of significant revenue losses.

44. In this case, there was no evidence whatsoever of Parkview reacting to the ongoing organizing efforts of the applicant in any illegitimate way. The applicant did not suggest Parkview's supervisors had attempted to prevent the applicant's organizers from meeting or speaking with its employees. Indeed, the evidence presented on that issue was to the contrary with Mr. Peterson being adamant that he instructed his supervisors that they were not to interfere with organizing efforts other than to ask the organizers to leave the job sites if they saw them trespassing. In that regard, the applicant did not provide even one example where that had occurred.

45. I am satisfied on the evidence about the inability of Mr. Kuypers to excavate basements correctly that Parkview's decision to terminate his employment was based exclusively on its concerns about his work, as demonstrated by its efforts to improve the quality of his precision work to no avail, the complaints it had received from its basement forming contractor and ultimately the charges Parkview incurred as a result of that contractor having to correct those errors. Similarly, I am also satisfied Parkview had to reduce its staff as a result of significant drops in revenues together with its bank expressing concerns about its line of credit.

46. It seems to me therefore the only remaining issue is whether the timing of the termination of Mr. Kuypers and the lay off of Messrs. Wash and Palmer was related in any way to the applicant's organizing efforts.

47. In order to find that it was, I must conclude Mr. Peterson was not a credible witness. There is no doubt it was Mr. Peterson acting on behalf of Parkview who decided both who would be let go and when they would be let go. Mr. Peterson's explanation for the timing of the termination and lay offs had nothing to do with the applicant's organizing activity. Mr. Peterson conceded that while he was aware a union was trying to organize Parkview's employees and there had been a meeting with employees on August 6<sup>th</sup> he was not aware any employees had joined the applicant and if they had, who had joined.

48. Parkview in its argument points to the number of meetings and visits the applicant's organizers had had during that three week period from mid July to August 6<sup>th</sup>. Parkview contends there was nothing unusual about August 6<sup>th</sup>. That day was simply just one more time the applicant's organizers came to its sites to talk with its employees.

49. Parkview also argues the applicant tried but failed to impugn Mr. Peterson's credibility when it contended he must have known that cards were signed on August 6<sup>th</sup> because an employee had reported the union had met with employees on that day and therefore that employee must have told Mr. Peterson cards were signed. The applicant did not put that proposition to Mr. Peterson during his cross-examination. The applicant had asked Mr. Peterson if he had been told about the meeting on August 6<sup>th</sup> and he immediately conceded that he had. The applicant did not however follow up with the next question. That is, Mr. Peterson was never asked if he had been told cards had been signed at that meeting. Nevertheless, the applicant argues the Board should draw the inference that Mr. Peterson must have known cards had been signed at that meeting because an employee had told him the union had met with employees.

50. In essence, the applicant asks the Board to draw the inference that Mr. Peterson knew employees had signed cards on August 6<sup>th</sup> because an employee had told him about the meeting and therefore must have told him what had occurred. Mr. Peterson was not asked to comment on that proposition. I am not prepared to reach that conclusion in the face of his uncontradicted testimony that he did not know who had signed cards and in the absence of the applicant putting that suggestion to him in cross-examination.

51. Mr. Peterson in his evidence was adamant that he never knew who had signed cards or were union supporters until he learned of the applicant's challenges. There was no evidence called by the applicant to contradict Mr. Peterson's testimony. More importantly, in assessing Mr. Peterson's credibility, I find that he was prepared to concede facts that were somewhat prejudicial to Parkview's position and readily acknowledged he preferred if Parkview's employees were not represented by a trade union. Mr. Peterson gave his evidence in a straightforward manner, answering the questions the applicant asked in cross-examination directly. He was neither evasive nor argumentative and it seemed to me, was attempting to recall to the best of his ability what had taken place and the reasons for his decisions.

52. His explanations for terminating Mr. Kuypers at the end of a probationary period when there was no probationary period in his contract of employment and his contract requiring 30 days'

notice of termination appeared at first to be contradictory and, as the applicant suggested, undermined those explanations. Yet, when Mr. Peterson was confronted with those contradictions, he expressed surprise and said he had not realized that was the case. He did not attempt to justify his error or his failure to appreciate what the contract said. He explained that the absence of a probationary period in the contract and the requirement to give notice of termination were matters he had overlooked.

53. Also, his explanation for the timing of the lay off of Messrs. Wash and Palmer, while also quite suspicious, was nevertheless rational. Mr. Peterson said he did not want the lay offs and termination carried out at different times. He thought it best for everyone concerned that they take place at the same time. He believed that having a termination one day and lay offs the next day would make a difficult situation even worse. Moreover, the same absence of knowledge about the applicant having obtained membership evidence from employees applies to the lay offs.

54. Parkview points out the entirety of the applicant's case rests on the Board drawing inferences about the "real" reason for Mr. Peterson's decisions. Unlike many other cases the Board has dealt with where it draws inferences of anti-union animus, there are no indicia of any anti-union behaviour on the part of Parkview in this case. In that regard I need only refer to the following passage in *Pop Shoppe (Toronto) Limited*, [1976] OLRB Rep. June 299 at 301:

In cases such as these the Board is very often required to render a determination based on inferential reasoning. An employer does not normally incriminate himself .... The Board, therefore, in assessing the employer's explanation must look to all of the circumstances which surround the alleged unlawful acts including the existence of trade union activity and the employer's knowledge of it, unusual or atypical conduct by the employer following upon his knowledge of trade union activity, *previous anti union conduct* and any other 'peculiarities'.  
[emphasis added]

There was absolutely no evidence whatsoever of Parkview overtly reacting in any way to the organizing efforts of the applicant. The applicant had been taking steps to organize Parkview's employees in the past with some degree of success. The applicant did not suggest Parkview had done anything to thwart or impede those past attempts and there was no evidence of Parkview having done so in this case, but for the timing of the lay off of Messrs. Wash and Palmer and the termination of Mr. Kuypers.

55. It is also significant, in my view that Parkview produced as witnesses all the individuals who had any role in the decision to terminate Mr. Kuypers and lay off Messrs. Wash and Palmer. Parkview called Mr. Peterson who was directly responsible for the decisions, Mr. Landry who was the comptroller and could give evidence about Parkview's financial situation and Mr. Dietrich, one of the two principals of Parkview and the individual to whom both Mr. Dietrich and Mr. Landry reported. Those three persons gave evidence and were subject to rigorous cross-examinations. Their evidence was consistent and plausible. There was no evidence presented by the applicant to contradict them.

56. Finally, I observe Parkview would have had no basis for knowing or even suspecting the applicant was filing the application for certification on the day it dismissed Mr. Kuypers and laid off Messrs. Wash and Palmer. The applicant's co-ordinators had made the decision in the evening of August 6<sup>th</sup> to file the application on August 7<sup>th</sup> after they had received the information and evidence collected by Messrs. Mazzotta and Davis. The applicant had not contacted any Parkview employee

who had joined it to tell them the application for certification was being filed. This is not a situation where a union had informed its supporters an application for certification was being filed and word then got back to the employer about an application for certification being imminent.

57. The fact the applicant met with Parkview's employees on August 6<sup>th</sup> and the fact Parkview was aware that meeting had occurred certainly creates significant suspicion about Parkview's motivation for effecting the lay offs and terminations when it did. However, it is important to weigh those facts against the fact the applicant had met with Parkview's employees several times before August 6<sup>th</sup>. Also, there was no direct evidence Parkview was aware some employees had signed cards on August 6<sup>th</sup> and for the reasons expressed earlier I am not prepared to make that inference. While the applicant asked the Board to draw the inference Parkview, and in particular, Mr. Peterson was told employees had signed cards on that day and therefore must have suspected an application would be filed shortly, the direct evidence was to the contrary. That is, in order for the applicant to succeed, the Board would have to rely on suspicion and coincidence together with the absence of any evidence of action taken by Parkview prior to that day in response to the organizing activities of the applicant and no direct evidence that Parkview had any knowledge of membership cards being signed to disregard the testimony of three witnesses called by Parkview whom I consider credible.

58. In the result, Parkview has met the burden of proof imposed by section 96(5) of the Act and has, on the balance of probabilities, persuaded me Parkview's decision to terminate Mr. Kuypers and lay off Messrs. Wash and Palmer on August 7, 2008 was not contrary to the Act. In my view, that decision was entirely unrelated to the organizing activities among Parkview's employees undertaken by the applicant.

59. In the result, the application in Board File No. 1727-08-U is hereby dismissed.

60. The parties agreed the application for certification in Board File No. 1468-08-R would continue before this panel of the Board to deal with a number of outstanding issues, including status disputes and the applicant's request for remedial certification under section 11 of the Act.

61. The Board directs the applicant to consult with Parkview and then advise the Registrar how it wishes to have the Board proceed with the issues remaining in dispute in the application for certification in Board File No. 1468-08-R.

62. Unless the applicant within 30 days of the date of this decision informs the Registrar it wishes to have the application for certification in Board File No. 1468-08-R listed for hearing, that application will be deemed dismissed pursuant to section 128.1(7) of the Act at that time without notice to the parties.

63. This panel of the Board remains seized with the application for certification in Board File No. 1468-08-R.

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**0672-10-OH Gerard F. Dunphy, Applicant v. Primary Response Inc., Humber College Institute of Advanced Learning and Technology, Responding Parties.**

**Employer – Health and Safety – Reprisal –** The applicant alleged that the responding parties violated s. 50 of the OHSA when he was removed as a security guard at Humber College and dismissed from employment by Primary Response – The applicant contended that the closer monitoring he was placed under after he contacted the Ministry of Labour to complain about violations of the Act was a reprisal – Humber moved to have the application dismissed against it on the grounds that it was neither the employer of the applicant, nor a person acting on behalf of an employer – The Board was satisfied that Humber was a third party to the employment relationship – The applicant failed to provide evidence that Humber was acting on behalf of Primary Response when Humber's employee began monitoring the applicant, or when Humber allegedly advised Primary that it wanted the applicant removed from its facility – Before a person who is neither the nominal nor the actual employer can be subject to this kind of reprisal complaint, the person must have the authority to punish the employee or, at least, affect the individual's employment – Motion by Humber allowed – Matter continues

**BEFORE:** *Harry Freedman*, Vice-Chair.

**DECISION OF THE BOARD:** March 21, 2011

1. The applicant filed a complaint under section 50 of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O. 1, as am. (the "Act") in which he contends the responding parties violated the Act by engaging in conduct that resulted in him being laid off from employment with Primary Response Inc. ("Primary") and being removed from his assignment as a security officer at Humber College Institute of Advanced Learning and Technology ("Humber") following his contacting the Ministry of Labour about what he believed were violations of the Act.

2. Humber, in its response to this complaint, had moved to have this application dismissed against it on the grounds the applicant had failed to disclose a *prima facie* case in respect of Humber. Primary Response supports Humber's motion. After the parties had exchanged submissions with respect to Humber's motion, as a result of an oversight, this matter was not brought to the attention of this panel of the Board until last week.

3. Humber contends the applicant is not its employee and that it is neither the employer of the applicant nor a person acting on behalf of his employer. Section 50 (1) of the Act provides, in part:

No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations

....

There is no question the applicant alleges he had sought enforcement of the Act. Humber asserts it cannot be found to have acted contrary to section 50 of the Act in respect of the applicant because it was not his employer and was not a person acting on behalf of the applicant's employer.

4. Humber also submits, in any event, the applicant had failed to assert any facts to suggest Humber did anything with respect to the applicant or that resulted in the applicant no longer being employed by Primary Response because the applicant had contacted the Ministry of Labour.

5. The applicant was employed as a security officer at Humber and was responsible for patrolling and controlling an off campus parking lot. He contacted the Ministry of Labour about a number of concerns that resulted in an inspector issuing an order on March 12, 2010.

6. After the inspector issued the order, the applicant alleges Humber, through one of its employees, began monitoring the applicant's activities much differently than before. The applicant's original complaint in respect of Humber as set out in the application he had filed was limited to the allegation that following the complaint and the inspector's order, Humber placed him under much closer monitoring which he contended was a reprisal for having initiated the complaint.

7. The applicant was subsequently removed from his assignment at Humber by Primary Response. The applicant alleged the reason given by Primary Response for his removal from his job was due to the applicant having failed to obtain a timely renewal of his security licence. The applicant alleges in his complaint Primary Response was using that as a pretext because within a few days he obtained the renewal and sought to return to work with Primary Response but was refused. He asserts Primary Response refused to continue to employ him after he established he had secured the renewal of his security licence because he filed the complaint with the Ministry of Labour.

8. After Humber had filed its motion to dismiss the complaint as against it, the applicant sought to amend his complaint to allege for the first time that someone at Primary Response had been advised that Humber did not want the applicant back to work at its premises. The applicant alleged when he sought to return to work he was told Primary Response would not send him back to Humber for that reason.

9. Both Humber and the applicant made detailed submissions with respect to the motion to dismiss the complaint against Humber. Primary Response supported Humber's motion.

10. In order for the applicant to succeed against Humber he must establish that Humber was an employer or person acting on behalf of an employer and that it had penalized the applicant because the applicant had sought enforcement of the Act.

11. There is no doubt that Primary Response was the applicant's employer. The applicant contends for purposes of the Act, Humber, as the owner that had engaged Primary Response to provide security services at its facilities ought to be considered his employer as well.

12. Humber objects to the applicant filing the amended complaint containing the new allegation about what someone from Humber had told and what Primary Response told the applicant. Humber argues the applicant must have known about that conversation when he first filed his complaint and his failure to allege what is a significant fact that, if proved, might connect Humber to the action taken by Primary Response, has materially prejudiced Humber.

13. In this case, Primary Response was responsible for determining where the applicant was assigned to work. Initially, the applicant's only claim that Humber had taken action against him because he had made a complaint under the Act was that an employee of Humber had monitored him more closely. Moreover, even if I were to permit the applicant to amend the complaint to allow him to assert someone at Primary Response had told him that Humber had advised Primary Response that Humber did not want him back does not, in my view, establish that Humber became an employer against whom the applicant can seek relief in this proceeding.

14. In this case, Humber is a third party to the employment relationship between the applicant and Primary Response. There is nothing in the applicant's pleading to suggest that Humber was acting on behalf of Primary Response when it allegedly advised Primary Response that it did not want the applicant assigned to its facility or that it was acting on behalf of Primary Response when its employee began monitoring the applicant more closely after he had contacted the Ministry of Labour.

15. In order for the applicant to succeed in this complaint against Humber, he would have to prove that Humber was an employer that retaliated against him because he had contacted the Ministry of Labour to complain about violations of the Act in his workplace.

16. In my view, the applicant has not pleaded any facts that demonstrate Humber had exercised control or direction over the applicant to the extent that it became, for purposes of section 50 of the Act, an employer in relation to the applicant. Humber had only engaged Primary Response to provide a security officer to patrol and control one of its parking lots. The applicant does not allege Humber had anything to do with who Primary Response had initially assigned to do that work.

17. Moreover, even if an employee of Humber monitored the work of the applicant more closely, it appears to me, absent any allegation of unwarranted harassment or unfounded criticism of his conduct, the mere fact the applicant's employer's client closely monitored the work performed by the applicant does not establish a *prima facie* violation of the Act by Humber. (I do note the applicant in his further submissions in reply to Humber's submissions argued that Humber's conduct constituted "harassment of the applicant through its increased monitoring and its eventual directed removal of the applicant from his placement at the College constituted unlawful acts of reprisal...." Although the applicant argued in his reply that such conduct was harassment, there were no facts pleaded that could give rise to that type of finding.)

18. The applicant submits the Act must be given an expansive reading when determining what entity is an employer. He relies on judicial authority interpreting the Act to impose similar obligations on owners, contractors, subcontractors and employers to ensure workers carry out their work safely regardless of who is their actual or nominal "employer".

19. It seems to me before a person who is neither the nominal nor actual employer of an employee claiming a violation of section 50 can be subject to a reprisal complaint under the Act, that person must have the ability or authority to punish that employee or, at the very least, affect that individual's employment. In this case, because Humber was not the employer of the applicant it could not terminate his employment. Where Primary Response assigned the applicant to work as a security officer was a matter between the applicant and Primary Response. The decision to lay off the applicant from employment and not assign him to work was a matter for Primary Response, not for Humber.

20. Based on the material filed by the applicant, I am satisfied Humber was neither an employer or person acting on behalf of an employer in respect of the applicant for purposes of section 50 of the Act. I wish to be clear reaching that conclusion does not in my opinion result in Primary Response being able to rely on Humber's instruction not to assign the applicant to its facility as justification for its lay off or its removal of the applicant from the Humber assignment. That is, if Humber sought the removal of the applicant from its facilities because the applicant contacted the Ministry of Labour to complain about violations of the Act, Primary Response may well be liable for violating the Act where, as the applicant's employer, it takes action against the applicant because he sought enforcement of the Act even if that action was at the behest of its client.

21. In the result, the motion by Humber is allowed. This complaint in so far as it alleges Humber violated section 50 of the Act must be dismissed.

22. This matter is referred to the Registrar to be listed for hearing to deal with the applicant's complaint against Primary Response.

23. This panel of the Board is not seized with this matter.

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**3395-10-R; 3396-10-U** United Food and Commercial Workers International Union, Local 175, Applicant v. **Puddy Brothers, A Division of Maple Lodge Farms Ltd.**, Responding Party.

**Bargaining Unit – Certification – Employee –** The UFCW sought to certify an “all employee” unit of the employer’s workers, with specified exclusions – By letter accompanying the application, the union clarified that in its view temporary agency employees were not the employer’s workers – During pre-vote discussions, the vote officer noted, among other things, that the applicant was not seeking to represent temporary agency personnel and the employer asserted that the agency employees were its employees for LRA purposes – At the vote, the applicant challenged every agency employee and, after the vote, the applicant made three further representations that it did not wish to represent the agency personnel or that the temporary employees should be excluded because they did not have “sufficient connection with the workplace” – In the last representation, the applicant sought to amend its bargaining unit description to reflect its original position that agency employees should be excluded – The Board refused to allow the amendment, finding that nowhere on the application or in its cover letter did the UFCW seek to exclude the temporary workers if they were employees of the employer – The Board found that the applicant’s challenge to the agency workers was only that they were not employees, not that they should be excluded because, as employees, they did not share a community of interest with the permanent staff – To allow the amendment would give the applicant an opportunity to resile from its earlier agreement to an all-employee unit – Matter continues

**BEFORE:** *Diane L. Gee*, Alternate Chair.

**DECISION OF THE BOARD:** March 24, 2011

1. The style of cause is hereby amended to reflect the correct name of the responding party: "Puddy Brothers, A Division of Maple Lodge Farms Ltd."

2. Board File No. 3395-10-R is an application for certification filed under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). Board File No. 3396-10-U is an application filed under section 96 of the Act containing allegations of unfair labour practices.

3. At a case management meeting held in connection with these matters on February 22, 2011, the applicant indicated that, amongst the issues in dispute in these matters, was whether the individuals supplied by agencies were employees of the responding party and, if so, whether they should be excluded from the bargaining unit on the basis of community of interest. The responding party agreed that whether the individuals supplied by agencies are employees of the responding party is a live issue. However, the responding party asserted that, having regard to the fact that the bargaining unit description had been agreed to by the parties, the applicant could not now seek to have the individuals supplied by agencies excluded from the bargaining unit on the basis of community of interest.

4. The Board directed that the issue as to whether the applicant can argue that the individuals supplied by agencies ought to be excluded from the bargaining unit on the basis of community of interest would be dealt with by way of written submissions. Those submissions have now been filed with the Board.

5. By way of its certification application dated January 11, 2011, the applicant sets out, as its "detailed description of the unit of employees of the responding party that the applicant claims to be appropriate for collective bargaining..." the following:

All employees of Puddy Brothers Ltd., Division of Maple Lodge Farms Ltd. in the city of Mississauga Ontario save and except supervisors, persons above the rank of supervisors, dispatchers, technical staff, truck drivers, office, clerical and sales staff.

6. In a letter that accompanied the certification application addressed to the Registrar of the Board, but not copied to the responding party, the applicant stated as follows:

The Respondent Employer has employees and also uses persons from temporary agencies. The Applicant is applying for certification to represent the Respondent Employer's employees. We anticipate that the Employer may attempt to inflate its list of employees by including the names of persons supplied by temporary agencies. If the Respondent Employer intends to do so, we request that the Board direct the Respondent Employer to provide separate schedules for its own employees and for persons from each temporary agency.

To be clear - the Applicant seeks certification of the employees of the Respondent Employer and asserts that the persons sent from the agency are not employees of the Respondent Employer.

7. The responding party subsequently filed a response in which the responding party indicated that it was not in agreement with the description of the bargaining unit included in the application for certification. The responding party's disagreement with the bargaining unit description

proposed in the application was that the proper name of the employer was "Puddy Brothers, A Division of Maple Lodge Farms Ltd." and not "Puddy Brothers Ltd., Division of Maple Lodge Farms Ltd."

8. By way of decision dated January 14, 2011, the Board ordered that a vote would be held on January 18, 2011. Consistent with the Board's normal processes, a Labour Relations Officer of the Board communicated with the parties in advance of the vote in an effort to resolve any outstanding issues. During the course of these pre-vote discussions, the parties agreed that the correct name of the responding party is Puddy Brothers, A Division of Maple Lodge Farms Ltd. The parties further agreed to the following description of the bargaining unit:

All employees of Puddy Brothers, A Division of Maple Lodge Farms Ltd. in the city of Mississauga Ontario save and except supervisors, persons above the rank of supervisors, dispatchers, technical staff, truck drivers, office, clerical and sales staff.

9. The Labour Relations Officer recorded such agreements as having been reached during pre-vote discussions on the Certification Worksheet. In addition, on the Certification Worksheet under the heading "other issues", where the positions of the parties on any other issues in dispute are identified, the following statements are set out:

- The Applicant has filed a ULP and asks for sec 11 relief.
- The Applicant is not seeking to represent temporary agency personnel.
- The Respondent states they are employees for the purposes of the LRA.

10. The vote was held on January 18, 2011. At the vote, a Labour Relations Officer went through the Certification Worksheet with the parties. At this time, the parties confirmed that there was no change in their position as to the correct name of the responding party and no change to the agreement that had been reached with respect to the description of the bargaining unit. On the Voters' List, all "agency employees" were challenged by the applicant. The applicant provided as its "reason for challenge" in respect of each of the agency workers "not an employee". Both parties signed the Certification Worksheet at the vote.

11. On January 25, 2011, the applicant wrote to the Board stating, in part, as follows:

We wish to clarify our position on our description of the bargaining unit. We described the bargaining unit in our application as "all employees". However, we made it clear - in both our application and our covering letter - that our proposed bargaining unit excluded persons supplied to the Responding Party by Agencies. Our primary position is that these Agency workers are not employees of the Responding Party, our position is that a bargaining unit which includes the Responding Party's regular, full-time employees (whom the Responding Party pays), and which excludes persons supplied to the Responding Party by Agencies, is an appropriate bargaining unit. These persons do not have sufficient connection to the workplace to be included in the bargaining unit.

12. The Regional Certification Meeting was held on February 9, 2011. At this meeting the parties again confirmed that they were agreed as to the correct name of the responding party, as well

as the description of the bargaining unit. In the section of the Certification Worksheet where the parties are to identify the issues in dispute, the following is indicated:

App as per letter of January 11 and 25 asserts also that bargaining unit excludes agency persons is appropriate.

Respondent objects to this.

Both parties signed the Certification Worksheet at the Regional Certification Meeting held on February 9, 2011.

13. On February 11, 2011, the applicant again wrote to the Board. In this letter, the applicant indicated that it relied upon its letters of January 11 and 25 for the purposes of its February 11, 2011 letter. The letter states, in part, as follows:

There are also 91 additional segregated ballots of persons who are supplied by Agencies and we assert these persons are not employees of the Responding Party and, in the alternative, if they are employees they ought not to be included in the bargaining unit sought by the Applicant of the regular employees of the Responding Party.

We assert it does not lie in the mouth of the Responding Party to treat the Agency persons as non employees and now, for the purpose of defeating the Application for Certification, assert they are employees.

14. By way of letter dated February 16, 2011, the applicant wrote to the Board stating, in part, as follows:

Finally, and further to our January 25, 2011 letter in which we clarified our position in regards to our bargaining unit description, we request, if necessary, leave from the Board to amend the bargaining unit description contained in our application for certification to reflect the position the Applicant has taken from the beginning; that is Agency persons should be excluded from the bargaining unit.

15. The applicant asserts that it has been the applicant's position from the very beginning that it does not want to represent the individuals supplied to the responding party by agencies. It asserts that while its primary position has been that the agency personnel are not employees of the responding party, it has always maintained the alternative position that, if they are employees of the responding party, the applicant does not wish to represent them.

16. For the reasons that follow, it is my determination that, having agreed with the responding party as to the bargaining unit description, the applicant will not be granted leave to amend its application as, permitting it to do so, would amount to permitting the applicant to resile from its agreement.

17. The application for certification required the applicant to provide a "detailed description of the unit of employees of the responding party the applicant claimed to be appropriate for collective bargaining". The applicant indicated that it was seeking a bargaining unit of "all employees" of the

responding party save and except supervisors, persons above the rank of supervisors, dispatchers, technical staff, truck drivers, office, clerical and sales staff. If the agency personnel were employees of the responding party, the bargaining unit description proposed by the applicant would include them within the bargaining unit. Nowhere on the application for certification form does the applicant indicate that, if the agency personnel are employees of the responding party, it was seeking to have them excluded from the bargaining unit.

18. The applicant relies on its letter of January 11, 2011 to the Registrar of the Board in support of its assertion that it was clear from the outset of its application that it did not wish to represent agency personnel, even if they were found to be employees of the responding party. The portion of the January 11, 2011 letter relied upon by the applicant is set out above in paragraph 6. The letter in question states that the applicant is applying for certification to represent the responding party's "employees" and asserts that the persons sent from the agency are not employees of the respondent employer. At no point in the January 11, 2011 letter does the applicant state that, in the event the agency personnel are found to be employees of the responding party, the applicant seeks to have them excluded from the bargaining unit. The January 11, 2011 letter does not support the applicant's position.

19. Accordingly, there is nothing in the application for certification itself or the accompanying letter that would indicate that it was the applicant's position from the outset that the agency personnel were to be excluded from the bargaining unit if they were found to be employees of the responding party.

20. By January 14, 2011, the parties, with the assistance of a Labour Relations Officer, had agreed on the description of the bargaining unit. The description was as proposed by the applicant in its application for certification with the sole exception that the name of the responding party was revised. The parties agreed that the appropriate bargaining unit description was an "all employees" bargaining unit save and except "supervisors, persons above the rank of supervisors, dispatchers, technical staff, truck drivers, office, clerical and sales staff."

21. The applicant relies on the notation made on the Certification Worksheet by the Labour Relations Officer to the effect that "the applicant is not seeking to represent temporary agency personnel" in support of its assertion that it was seeking to have the agency personnel excluded from the bargaining unit, even if they were found to be employees of the responding party. It is my determination that, when considered in context, it is not probable that the notation meant that the applicant was expressing the position that it did not want to represent agency personnel even if they were found to be employees of the responding party.

22. First, the notation must be read in light of the fact that the parties had just reached an agreement as to the description of the bargaining unit that included "all employees" of the responding party, without stating that agency personnel, if found to be employees, were excluded. Further, the very next notation on the Certification Worksheet states "Respondent states they are employees for the purposes of the LRA", suggesting that the understanding was that the applicant was not seeking to represent the agency personnel because they were not employees of the responding party. Finally, at the vote, the applicant confirmed its agreement to an "all employee" bargaining unit without excluding agency personnel, and challenged all agency personnel on the sole basis that they were not employees of the responding party. The agency personnel were not challenged on the alternative basis that they ought to be excluded from the bargaining unit based on community of interest. Having

regard to the context in which the notation was made by the Labour Relations Officer, I do not consider it probable that the notation was made as a result of the applicant asserting that the agency personnel were to be excluded from the unit even if they were found to be employees.

23. The next relevant event to occur was the taking of the representation vote. As indicated above, the parties confirmed at the vote that there was no change to the agreement that had been reached with respect to the description of the bargaining unit. Thus, the applicant again confirmed that it was seeking a bargaining unit of "all employees" of the responding party without any specification that, in the event the agency personnel were found to be employees of the responding party, it would be seeking to have them excluded. When challenging the agency personnel on the voters' list, the applicant provided only one reason for challenge; the applicant challenged each person supplied by an agency on the grounds that they were "not an employee". The applicant did not challenge the agency personnel on the alternative basis that they ought to be excluded from the bargaining unit. The applicant's agreement to an "all employee" bargaining unit that did not exclude agency personnel and only challenging the agency personnel on the grounds that they were "not an employee" suggests that, at this stage, the applicant was not taking the position that agency personnel, if found to be employees, ought to be excluded from the bargaining unit.

24. I therefore find that, as of the date of the vote, the applicant had agreed with the responding party that a bargaining unit of all employees of the responding party, with exceptions that did not include agency personnel, was appropriate. As of the date of the vote, the applicant had not indicated that it was taking the alternative position that, if the agency personnel were found to be employees of the responding party, they ought to be excluded from the bargaining unit.

25. Accordingly, when, on January 25, 2011, the applicant wrote to the Board stating that a bargaining unit which excludes persons supplied to the responding party by agencies is an appropriate bargaining unit on the basis that these persons do not have sufficient connection to the workplace to be included in the bargaining unit, such was the first time that the applicant took this position. On January 25, 2011, two weeks after the filing of the certification application and one week after the representation vote, the applicant raised an alternative position that was inconsistent with the bargaining unit description it had proposed in the application for certification and agreed to with the responding party.

26. The applicant further submits that, if it is determined that it has raised a new issue, there is no valid labour relations or other reason why the applicant should be precluded from doing so. The applicant asserts that there is no surprise and there is absolutely no prejudice to the responding party. The applicant relies on *OPTIONS, Northwest*, [2000] OLRB Rep. November/December 1209 and *Teamsters, Local Union No. 419 v. Prologix*, 2005 CanLII 8253 (ON L.R.B.) in support of its position that an applicant can amend its application for certification.

27. The responding party states that the issue is not whether the applicant can amend its application; the issue is whether the applicant can resile from its agreement as to the appropriate bargaining unit description. The responding party argues that the Board has established policies and procedures that make it clear that agreements reached by the parties regarding bargaining unit descriptions are final and binding. According to the responding party, the Board's jurisprudence establishes that, once the bargaining unit description has been agreed to, it is not open to a party to later re-consider and renege on that agreement. In support of its position, the responding party relies on: *Moore Corporation Limited*, [1992] OLRB Rep. May 614; *Teamsters Local Union 91 v.*

*Komtech Inc.*, 2000 CanLII 12342 (ON LRB); *Ontario Public Service Employees Union v. Midtown Meats Cold Storage Ltd.*, 2002 CanLII 31687 (ON LRB); *United Food and Commercial Workers International Union, Local 175 v. Compass Group Canada (Beaver) Ltd.*, 2004 CanLII 47399 (ON LRB); *Teamsters International Union, Local 847, AFL-CIO-CLC v. MMCC Solutions Inc.*, 2006 CanLII 2101 (ON LRB) *Canadian Union of Public Employees v. Jamaican Canadian Association*, 2007 CanLII 23853 (ON LRB) *Labourers' International Union of North America v. Modu-Loc Fence Rentals Ltd.*, 2010 CanLII 51937 (ON LRB).

28. The two decisions relied upon by the applicant are not directly on point. While it is true that the Board granted the applicant leave to amend its application in each case, in neither case had the applicant previously signed off the Certification Worksheet confirming its agreement to the very position that it later sought to amend. Neither case raised the issue as to whether the Board would permit the applicant to resile from an agreement it had earlier entered into.

29. There is a considerable body of Board jurisprudence that articulates the value and importance of enforcing agreements reached by the parties. To reiterate but a sampling of the Board's reasons for holding parties to their agreements, permitting parties to resile from agreements creates uncertainty and undermines the significant labour relations value of encouraging parties to enter into agreements. A significant percentage of issues that arise in Board cases are resolved by the parties such that the functioning of the Board is facilitated by fostering such agreements. Further, holding parties to their agreements fosters finality in the resolution of disputes. For these reasons and many others, the Board has been extremely reluctant to do other than hold parties to their agreements.

30. In the present case, the applicant agreed with the responding party as to the bargaining unit description. If the agency workers are found to be employees of the responding party, they would fall within the bargaining unit description agreed to. The only way in which the applicant could advance its alternative position that it asserted for the first time two weeks after the application was filed, would be for it to be permitted to amend the bargaining unit description that it agreed, on three separate occasions, was appropriate. Permitting the applicant to resile from its agreement would undermine the certainty and finality that agreements are intended to create and undermine the value of parties entering into agreements. Accordingly, it is my determination that the applicant will not be granted leave to amend its application so as to permit it to advance its alternative position that, if the agency personnel are employees of the responding party, they ought to be excluded from the bargaining unit on the basis of community of interest.

31. The hearing of these matters will continue on March 28, May 3 and May 18 and 19. The first issue that will be determined by the Board is whether the agency workers are employees of the responding party. This issue will be determined by the Board before moving on to further issues in dispute in these files. On March 28, 2011, the responding party will proceed first and will begin by calling a witness to provide an overview of the responding party's business and the nature of its relationship with the agencies that supply the agency workers in issue in this case.

32. I am not seized.

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## COURT PROCEEDINGS

**1048-07-HS; 0255-08-HS (Court File No. 373/09) Blue Mountain Resorts Limited, Richard Den Bok, OLRB and Attorney General of Ontario**

**Intervenor – Judicial Review – Standing – Two intervenors brought motions for standing on a judicial review application brought by Blue Mountain to challenge the Board's interpretation of "person" in s. 51(1) of OHSA – The Board found that "person" was not restricted to "worker" – Conservation Ontario argued the Board's interpretation could pose a direct and significant risk to its day-to-day operations – The Association of Chiefs of Police suggested that the Board's view, if upheld, will negatively affect the cost of providing police services throughout Ontario – The Motions Judge ruled that Conservation Ontario will provide a broader context from which the court can evaluate the purpose of the legislation and interpret the impugned provision, but the Chiefs of Police were attempting to introduce a new ground for review of the Board's decision that will unnecessarily delay the application for judicial review – Orders accordingly**

Board decision reported at [2009] OLRB Rep. March/April 2003.

*Superior Court of Justice (Divisional Court), Lederer J., March 28, 2011*

### ENDORSEMENT

#### *Background*

[1] The Ontario Labour Relations Board ("Board") issued a decision on March 23, 2009. It considered the application of s.51 (1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. 0.1. It held that the reference to "a person", which is included in the introductory words to the section, extends beyond employees to include anyone who is "killed or critically injured at a workplace". Thus, the notification requirements, found in s. 51(1), would apply to every circumstance in which someone is critically injured at a workplace. The employer was Blue Mountain Resorts Limited ("Blue Mountain"). As the decision of the Board makes clear, it operates a recreational facility, particularly a ski hill. It seeks judicial review of the decision of the Board. Blue Mountain is concerned that the interpretation of the word "person" is too broad and extends the authority of the Board beyond the jurisdiction that was intended by the legislation. Blue Mountain is of the view that, if allowed to stand, the finding of the Board will have a serious impact on its business and its day-to-day operations.

[2] I am asked to consider two applications for intervenor status in the judicial review. The first is brought by Conservation Ontario. It is described as a non-profit organization comprised of a network of thirty-six conservation authorities within Ontario. The second is brought by the Ontario Association of Chiefs of Police ("OACP"). It is an organization made up of senior officers from various police services across the province. It is described as being committed to fostering closer partnerships with government decision-makers to address concerns over legislative impacts on the effectiveness of policing in Ontario.

[3] The judicial review was commenced on August 11, 2009. The respondents were served with the motion brought on behalf of Conservation Ontario on February 24, 2011 and with the motion made by the OACP on March 20, 2011. The judicial review is scheduled to be heard on April 20, 2011. At this point, there is some urgency to a decision being made as to whether intervenor status will be granted to either or both of the moving parties.

[4] The motions are brought, pursuant to Rule 13.03(1) of the *Rules of Civil Procedure*. The basis upon which a person may be granted leave to intervene as a party is found in Rule 13.01, which states:

- (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,
  - (a) an interest in the subject matter of the proceeding;
  - (b) that the person may be adversely affected by a judgment in the proceeding; or
  - (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.
- (2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

#### *Conservation Ontario*

[5] The *Occupational Health and Safety Act* has a broad remedial purpose. The interpretation of s. 51(1), as determined by the Board, could affect a wide array of businesses and other employers across the Province. As matters presently stand, the factual foundation and the legal basis from which submissions will be made on the judicial review come from the perspective of a single employer operating in one location.

[6] The material filed on behalf of Conservation Ontario demonstrates that it is comprised of thirty-six conservation authorities across Ontario. These are local, community-based management agencies. One of the most important components of their mandate has become the use of conservation land for parks and other recreational uses. The four hundred and fifty-one conservation areas play an essential recreational, educational and environmental role within their respective watersheds. The facilities within these conservation areas attract close to 5.1 million visitors each year. They provide year-round facilities and outdoor recreational opportunities for people of all ages including picnicking, boating, camping, swimming, fishing, hunting, trapping, cycling, snow-shooting, horseback riding, cross-country skiing, snowmobiling, golf and more extreme recreational opportunities such as downhill skiing, snowboarding, rock climbing, ice climbing, mountain biking, water tubing, water slides and wave action pools.

[7] In carrying out their programs, conservation authorities employ approximately 1,556 full-time staff and approximately 1,970 contract, seasonal and part-time staff. Conservation authorities derive the funds to operate their programs from a variety of sources, including grants from the provincial and federal governments, levies from the municipalities and revenues raised through services and through recreational and educational programs. Of the approximately \$212,270,000 in funds raised for the normal operating programs, \$103,000,000 is derived from self-generated

revenues. Over \$48,700,000 of this comes directly from recreation and education programs and land management.

[8] Counsel for Conservation Ontario submitted that its members have a direct interest in the proper interpretation of section 51(1) of the *Occupational Health and Safety Act*. Counsel went on to say that, if the application is denied and the Board's interpretation of the employer's reporting obligation is adopted, Conservation Ontario faces a direct and significant risk that its day-to-day operations and its revenue stream will be disrupted. Counsel suggested that, as public agencies operating across the province offering many varied programs which assist in funding their overall operations, conservation authorities, through Conservation Ontario, could make a distinctive and useful contribution to this judicial review. Finally, counsel for Conservation Ontario said that it did not require the filing of further material and could and would rely on the record already before the court. It would not delay or in any other way prejudice the respondents to the judicial review.

[9] On this basis, counsel submitted that Conservation Ontario satisfies all the requirements to intervene.

[10] Counsel for the respondents takes the position that Conservation Ontario will add nothing to the proceeding. It is an operator of recreational facilities and, for the purposes of this judicial review, is indistinguishable from Blue Mountain.

[11] The cases referred to in the various *facta* filed, and by counsel, suggest that the contribution of an intervenor need not be unique or distinct from the existing parties (see: *Van Breda v. Village Resorts* (6 August 2009), Toronto, M37820 (C49188), (C49632) at para. 16). The contribution may "overlap" with those of the parties (see: *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Limited* reflex, (1990), 74 O.R. (2d) 164 (C.A.) at paras 7 and 8). Where the prospective intervenor is generally aligned with the position of one side, it can still make a useful contribution to the argument of the issues before the court (see: *Childs v. Desomeux* 2003 CanLII 47870 (ON C.A.), (2003), 67 O.R. (3d) 385 (C.A.) at para. 16).

[12] Conservation Ontario will provide a broader context from which the court can evaluate the purpose of the legislation and interpret the provision being considered. This should assist the court in having a more comprehensive appreciation of the different interpretations it will be asked to consider.

[13] An order will go recognizing Conservation Ontario as an intervenor in this judicial review.

#### OACP

[14] The OACP is concerned that the interpretation of s. 51(1) of the *Occupational Health and Safety Act* enunciated by the Board will have a significant impact on police services across Ontario. The affidavit filed in support of its motion suggests that the interpretation of the Board will lead to a "broader negative impact of the public's use of highways and roadways, particularly where a roadway or portion of a highway may have to be closed down until released by a Ministry of Labour inspector...". The affidavit says that "if the Court upholds the Board's decision, it will result in police officers [*sic*] and police chief's inability to fulfill their duties as outlined in the *Police Services Act*..." and that such a decision would have "...the unintended consequence of negatively affecting the cost of providing police services throughout municipalities of Ontario and for the Province of Ontario". No information is provided in support of these statements. There is no factual record that would speak to these concerns.

[15] Counsel for the respondents observed that these statements are an addition to the "factual matrix" that was placed before the Board. He pointed out that, in *Bedford v. Canada (Attorney-General)* 2011 ONCA 209 (CanLII), the prospective intervenor, in an appeal, proposed to raise an issue which was new to the litigation. It sought to introduce an entirely new ground on which to challenge the legislation at issue. The application to intervene was refused, in part, because the record, as it existed, did not deal with or provide a foundation from which to argue the new issue. The parties had framed the issues and developed the record as they thought best. The Court of Appeal found that it would do a disservice to the parties and to the court to allow the new issue to be litigated.

[16] Among the concerns of the court, in *Bedford*, was timing. The appeal was scheduled. Tight timelines had been applied. The parties were anxious to proceed. The court found that introducing a new ground on which to challenge the legislation would necessitate delay. In the case I am asked to decide, counsel for Blue Mountain indicated a willingness to see the judicial review adjourned, if necessary, to allow for the record to be completed. Counsel for the respondents made clear he would want to cross-examine representatives of the OACP.

[17] To my mind, this has been going on for long enough. In any event, it is not appropriate to introduce an entirely new component that was not before the Board and is not part of the record.

[18] The application of the OACP is dismissed.

#### *Costs*

[19] No submissions were made as to costs. The results on the two motions were different. I observe that the issues were important and that those involved, with the exception of Blue Mountain, represent public interests. Perhaps this is a matter where there should be no costs.

[20] If the parties are unable to agree as to costs, I may be spoken to.

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**0116-06-R; 2904-09-U; 2905-09-FC; 3292-09-M (Court File No. CV-10-409024-0000)**  
**Rainbow Concrete Industries Limited, Ian Anderson, International Union of Operating Engineers, Local 793, OLRB and Attorney General of Ontario**

**Civil Claim – Rainbow Concrete asserted a tort claim (misfeasance in a public office) for damages against a Vice-Chair of the Board relating to his conduct in a number of proceedings before the Board – One decision had already been the subject of an unsuccessful judicial review by Rainbow Concrete and two more were still pending before Divisional Court – The Court found the claim to be an abuse of process as it was a collateral attack on the Board's decision – The Court also found that the pleadings failed to adequately plead the material facts necessary to support the tort of misfeasance in public office – Finally, the court, while not deciding the matter on this issue, found the defendant's arguments about the extension of judicial immunity to a Vice-Chair, while acting in his or her adjudicative capacity to be persuasive – Statement of Claim was struck without leave to amend**

*Superior Court of Ontario (Civil Claim) Justice Conway, April 12, 2011*

### ENDORSEMENT

The Defendant Anderson, Vice Chair of the OLRB has brought a motion to strike the Plaintiff's claim under Rules 21 and 25. The Statement of Claim asserts a tort claim for damages against Mr. Anderson in his conduct of various labour proceedings involving the Plaintiff, the Union Defendant and various decisions which he rendered during the course of those proceedings. One decision has been the subject of an unsuccessful judicial review hearing before the Divisional Court. Two others decisions (directing settlement by arbitration and advising regarding conduct of an employee vote) are the subject of pending Judicial Review applications to the Divisional Court which are scheduled to be heard in September, 2011. The cause of action against Mr. Anderson is misfeasance in public office.

Essentially, the Plaintiff's claim relates to Mr. Anderson's conduct of the proceedings and his decisions as an adjudicator of the issues as between Rainbow and the Union.

#### 1. Abuse of Process/Res Judicata

I consider the Plaintiff's claim to be an abuse of process. First, it is seeking to relitigate the decision of the Divisional Court dismissing the application for Judicial Review of the certification (and reconsideration) decision. It is a collateral attack on that decision. Further any issues with respect to Mr. Anderson's decisions on Certification (and Reconsideration) and conduct of the hearings with respect to same could and should have been raised before the Divisional Court. They are *res judicata* – see *Alpha Laboratories Inc. v. Ontario Minister of Health* [2000] OJ No. 1767 (SCJ) and *Toronto (City) v Canadian Union of Public Employees*. (CUPE), Local 79 [2003] 3 SCR 77.

As for the other two decisions which are pending before the Divisional Court that is the forum in which any issues concerning those decisions should be raised. They should not be argued as a tort claim in this court.

The plaintiff argues that because it is seeking damages from Mr. Anderson, the claim should proceed in this court, not Divisional Court. I disagree - the form of relief claimed does not govern – it is the substantive issues which need to be looked at. In this case, all of the issues raised by the Statement of Claim go to the conduct and decisions of Mr. Anderson in his adjudicative capacity. They belong in Divisional Court (see *Alpha, supra*, at para. 24)

#### 2. Misfeasance in Public Office

While it is sufficient to dispose of this motion as an abuse of process, I also accept the Defendant's submission that the Statement of Claim does not adequately plead the material facts necessary to support the tort of misfeasance in public office. The claim pleads conclusions of law and bald allegations of fact (e.g. para 55, 56, 57, 58 and 59). This does not meet the standard set out in *Ontario v. Gratton – Masuy Environmental Technologies Inc.* 2010 ONCA 501. Further, the plaintiff has not come forth with any additional material facts since this motion was brought or sought to amend the Statement of Claim. I therefore do not think it is appropriate to grant leave to amend (see *Gratton, supra* at para 110).

### 3. Judicial Immunity

Both parties made extensive submissions on judicial immunity and whether Mr. Anderson is protected since he acted in his adjudicative capacity. While I do not propose to decide this motion on that basis, I find the defendant's arguments about the state of the law and the rationale for extending this immunity to Mr. Anderson far more compelling than the Plaintiff's on the basis of the principles set out in *Sirros v. Moore* [1974] 3 All ER 776 and *Montgomery v. Zeus Development Ltd.* [1989] BCJ No. 255. I am also more persuaded by the Defendant's submissions with respect to the exception to immunity for allegations of bad faith (see *Tsai v. Klug* OJ No. 2277 (SCJ) aff [2006] OJ No. 665) and the absolute nature of such immunity.

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The Plaintiff's recourse in this case is to proceed to the Divisional Court. The Statement of Claim is struck without leave to amend and the action is dismissed as against Mr. Anderson.

On the agreement of counsel, the Plaintiff shall pay costs of the motion to Mr. Anderson in the amount of \$5,000, all in.

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**0264-09-G; (Court File No. 322/10) Ontario Power Generation Inc. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, OLRB**

**Construction Industry Grievance – Judicial Review – The Board had decided that OPG, although not the direct employer, was exercising power in respect of the grievor's employment when it banned him from its sites, that its actions came within the scope of the EPSCA Agreement, and that it had to establish that those actions met the standard of the Agreement (see [2010] OLRB Rep. March/April 298) – The Court found this was a preliminary ruling on the arbitrability of the grievance, noted that the Court does not generally entertain judicial review of a preliminary ruling while a proceeding is pending before a tribunal and was not persuaded there were any exceptional circumstances to deviate from that in this case – Application was quashed as premature**

*Superior Court of Justice (Divisional Court), J. Wilson, Swinton and Low JJ., April 18, 2011*

**LOW J.** (ORALLY)

[1] The Board has made a preliminary ruling as to the arbitrability of Mr. Marshall's grievance.

[2] The applicant argues that this ruling is properly hived off from the grievance which is ongoing, for purposes of judicial review.

[3] This Court will not generally entertain judicial review of a preliminary ruling while the proceeding before the tribunal is pending and has not been decided on the merits (see *Ontario College of Art et al., v. Ontario (Human Rights Commission)* 1993 CanLII 3430 (ON S.C.D.C.), (1993), 99 D.L.R. (4<sup>th</sup>) 738.)

[4] The applicant argues that there are exceptional circumstances here that militate in favour of bifurcating this ruling from the results on the merits for purposes of judicial review. The procedural consequence would be multiple proceedings in the court system which should be avoided.

[5] We are not persuaded that exceptional circumstances have been shown. There is no evidence that there is or will be a flood of grievances by employees of one employer against a different employer covered by the Collective Agreement. As well, this was an issue that the parties could have addressed at the bargaining table for prospective purposes.

[6] We are therefore of the view that the application is premature and the application, is on that basis, quashed, without prejudice.

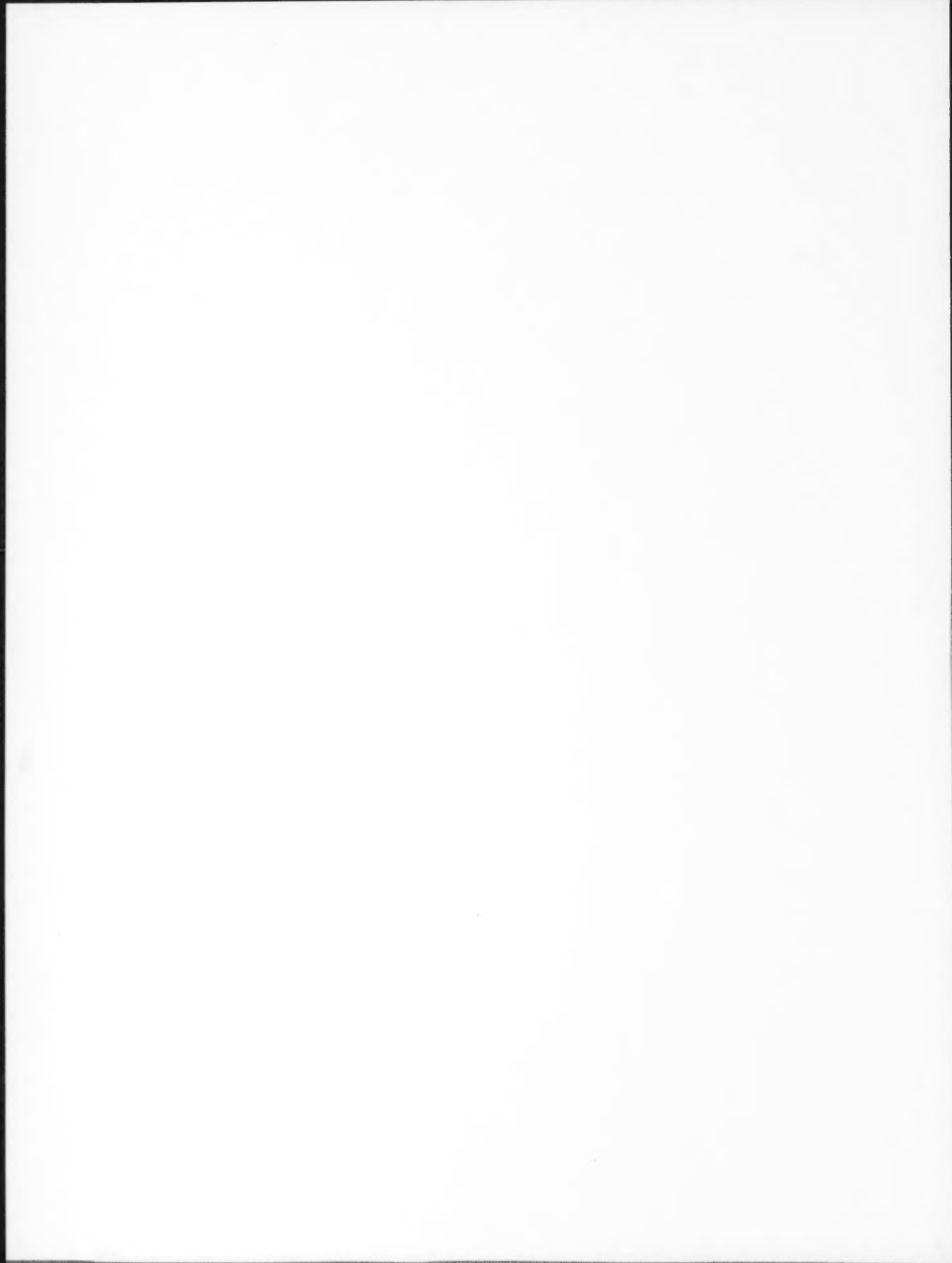
**J. WILSON J.**

**COSTS**

[7] Costs payable to the respondent Union in the amount of \$10,000 (\$5,000 payable by Aecon and \$5,000 payable by OPG).

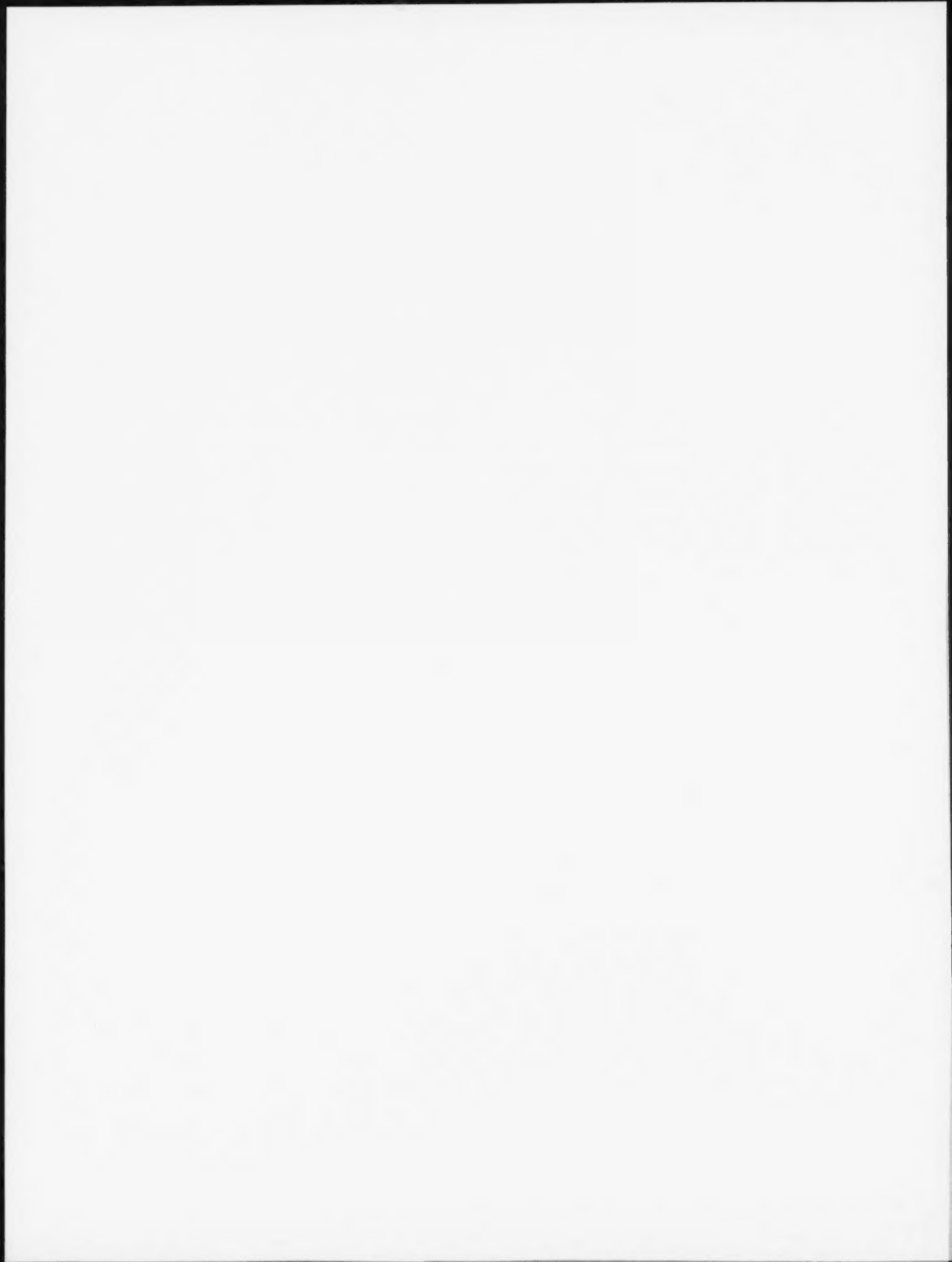
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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING FEBRUARY 2011

### APPLICATIONS FOR CERTIFICATION

#### Bargaining Agents Certified Without Vote

**1194-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Alto Restoration Inc. (Respondent)

Unit: "all construction labourers in the employ of Alto Restoration Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**2007-10-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Green Side Up London Ltd. (Respondent)

Unit: "all construction labourers in the employ of Green Side Up London Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Green Side Up London Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in unit)

**2630-10-R:** United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Groupe LAR Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Groupe LAR Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Groupe LAR Inc. in all sectors of the construction industry in the Township of Harmon and the adjacent Townships of Mowbray, Boyle, Bradley, Acres, Kipling, Emerson, Cockshutt and Howells, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2774-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 2124279 Ontario c.o.b. Wicks Construction and General Contracting Ltd. (Respondent)

Unit: "all construction labourers in the employ of 2124279 Ontario c.o.b. Wicks Construction and General Contracting Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (12 employees in unit)

**3038-10-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Mascagni Painting Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Mascagni Painting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Mascagni Painting Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional

Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

**3629-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. M & M Concrete & Stone Inc. (Respondent)

Unit: "all construction labourers in the employ of M & M Concrete & Stone Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of M & M Concrete & Stone Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in unit)

**3646-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Barjo Investments Inc. and, Northern Frag Industries Inc. and, Frag Demolition & Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Barjo Investments Inc., Northern Frag Industries Inc., Frag Demolition & Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Barjo Investments Inc., Northern Frag Industries Inc., Frag Demolition & Construction Inc. in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**3682-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Finspan Construction Ltd. (Respondent)

Unit: "all construction labourers in the employ of Finspan Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Finspan Construction Ltd. in all sectors of the construction industry in the District of Kenora including the Patricia portion, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**3763-10-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Juzek Pawlowski c.o.b. as Barton Painting (Respondent)

Unit: "all painters and painters' apprentices in the employ of Juzek Pawlowski c.o.b. as Barton Painting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Juzek Pawlowski c.o.b. as Barton Painting in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

### **Bargaining Agents Certified Subsequent to Vote**

**1709-07-R:** Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. 792844 Ontario Inc. o/a Secord Construction Ltd. (Respondent)

Unit: "all construction labourers in the employ of 792844 Ontario Inc. o/a Secord Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of 792844 Ontario Inc. o/a Secord Construction Ltd. in all sectors of the construction industry within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial,

commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in unit)

**3061-09-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Veolia ES Canada Industrial Services Inc. (Chatham Division) (Respondent)

Unit: "all employees working in and out of Veolia ES Canada Industrial Services Inc. Chatham Division and its employees located at Ford Windsor, save and except Supervisors and persons above the rank of Supervisor, laboratory employees, Client Care Specialist, Office, Clerical and Sales Staff" (14 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	

**1282-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Carrington Homes (Courtice) Limited (Respondent)

Unit: "all construction labourers in the employ of Carrington Homes (Courtice) Limited in all sectors of the construction industry excluding the industrial, commercial and institutional sector, in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

**3314-10-R:** Canadian Union of Public Employees (Applicant) v. Omni Health Care Limited Partnership operating as Garden Terrace (Respondent)

Unit: "all Registered Practical Nurses employed by Omni Health Care Limited Partnership operating as Garden Terrace in the City of Kanata, Ontario save and except supervisors and persons above the rank of supervisor" (25 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

**3315-10-R:** Canadian Union of Public Employees (Applicant) v. Omni Health Care Limited Partnership operating as Garden Terrace (Respondent)

Unit: "all employees employed by Omni Health Care Limited Partnership operating as Garden Terrace in the City of Kanata, Ontario save and except Registered Nurses, Registered Practical Nurses, supervisors and persons above the rank of supervisor" (156 employees in unit) *(Having regard to the agreement of the parties.)*

**3318-10-R:** Workers United Ontario Council (Applicant) v. Centre for Information and Community Services of Ontario (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of Centre for Information and Community Services of Ontario in the Greater Toronto area save and except Executive Director, Program Directors, Director of Finance and Operations, Human Resource Consultant, Program Managers, and other management positions, Office Administrators, Executive Assistant, and short-term employees" (125 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	117
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	79
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	79
Number of ballots marked in favour of intervener	3
Number of ballots segregated and not counted	0

**3320-10-R:** Workers United Ontario Council (Applicant) v. John Forsyth Shirt Co. (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of John Forsyth Shirt Co. at 6471 Northwest Drive Mississauga Ontario L4V 1K2, excluding executives, supervisory employees, experimental and professional employees, quality inspectors, technical and administrative employees, clerical and office employees or other employees exercising a managerial function or employed in a confidential capacity" (17 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	0

**3403-10-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Cramahe (Respondent)

Unit: "all employees employed by The Corporation of the Township of Cramahe in the County of Northumberland, save and except supervisors and persons above the rank of supervisor, and all persons employed by the Fire Department and the Library Board" (34 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	7

**3437-10-R:** Canadian Union of Public Employees (Applicant) v. Ottawa Fertility Centre Inc. (Respondent) v. Ontario Public Service Employees Union (Intervener)

Unit: "all administrative employees employed by the Ottawa Fertility Centre Inc. in the City of Ottawa, Ontario, save and except supervisors and persons above the rank of supervisor, Accountant and Executive Assistant/Human Resources Advisor and employees represented by another trade union as of January 17, 2011" (18 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

**3659-10-R:** Canadian Union of Public Employees (Applicant) v. Corporation de la Cite de Clarence - Rockland (Respondent)

Unit: "all employees of the Corporation of the City of Clarence-Rockland in the City of Rockland Ontario save and except supervisors/foremen, persons above the rank of supervisors/foremen, persons regularly employed for 28 hours or less per week, managers of recreational and municipal facilities, payroll analysts, program managers, daycare supervisor and students." (70 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	68
Number of persons who cast ballots	
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	57
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

**3695-10-R:** Sheet Metal Workers' International Association - Local Union No. 285 (Applicant) v. Spinnaker Industries Inc. (Respondent)

Unit: "all employees of Spinnaker Industries Inc. working in Toronto, Ontario, save and except forepersons and persons above the rank of foreperson, office, sales and clerical staff" (54 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	56
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	47
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	0

**3721-10-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Hbc Logistics, A Division of the Hudson's Bay Company (Respondent) v. Canadian Distribution Workers (Intervener)

Unit: "all Associates of Hbc Logistics, a Division of the Hudson's Bay Company employed at its Brampton Logistics Centre at 8875 Torbram Road, save and except Team Leader, HBC Support Functions, Human Resource Associates and Quality Assurance Associates that do not overlap with existing bargaining unit work, Associates above the rank of Team Leader, Co-ordinator, temporary agency personnel, part-time Associates and students" (196 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	198
Number of persons who cast ballots	183
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	181
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	100
Number of ballots marked in favour of intervenor	80
Number of ballots segregated and not counted	2

**Applications for Certification Dismissed Subsequent to Vote**

**0406-07-R:** UNITE HERE (Applicant) v. National Logistics Services (2006) Inc. (Respondent)

Unit: "all employees of National Logistics Services (2006) Inc. in the City of Mississauga, save and except office staff, marketing staff, sales staff, customer service representatives, agency employees, supervisors/team leads and those above the rank of supervisor/team lead." (190 employees in unit)

Number of names of persons on revised voters' list	175
Number of persons who cast ballots	166

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	131
Number of segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	31
Number of ballots marked against applicant	100
Number of ballots segregated and not counted	35

**1092-09-R; 1131-09-R; 1132-09-R; 1133-09-R:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit (1092-09-R): "all office and clerical employees of Humber River Regional Hospital in Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor, human resources personnel, program assistants, Secretaries to: the Executive Director, Associate Executive Director, Director of Nursing, Director of Personnel, Medical Staff Committee, Director Finance, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period." (192 employees in unit)

Unit (1131-09-R): "all office and clerical employees of Humber River Regional Hospital in Metropolitan Toronto, regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation periods, save and except supervisors and foremen, persons above the rank of supervisor and foreman, human resources personnel, program assistants, one secretary to each of the following: Executive Director, Assistant Executive Directors, Director of Purchasing, Business Office Supervisor, Admitting Supervisor, Communications Supervisor, Occupational Health Coordinator and persons covered by subsisting collective agreements." (172 employees in unit)

Unit (1132-09-R): "all employees of Humber River Regional Hospital in Metropolitan Toronto set out in the Schedule of Job Classifications and Wage Rates (attached as Appendix A of the collective agreement), save and except human resources personnel, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dieticians, technical personnel, program assistants, inventory analysts, supervisors and foremen, persons above the rank of supervisors and foremen, persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods, and persons covered by subsisting collective agreements." (275 employees in unit)

Unit (1133-09-R): "all employees of Humber River Regional Hospital in Metropolitan Toronto, regularly employed for not more than twenty-four (24) hours per week, and students employed during the school vacation period, save and except human resources personnel, professional medical staff, program assistants, graduate and undergraduate nursing staff, paramedical and technical employees, supervisors, persons above the rank of supervisor, persons covered by subsisting collective agreements." (292 employees in unit)

**1899-09-R; 1900-09-R; 1902-09-R:** Ontario Workers' Union (Applicant) v. Mount Sinai Hospital (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit (1899-09-R): "all service employees of the Hospital regularly employed for not more than twenty-four (24) hours per week save and except professional medical staff, graduate nurses, undergraduate nurses, graduate pharmacists, graduate dieticians, student dieticians, social workers, technical personnel, foremen, persons above the rank of foreman, office staff employed in a cooperative training program and persons covered by subsisting collective agreements" (195 employees in unit)

Unit (1900-09-R): "all service employees of Mount Sinai Hospital in the City of Toronto, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dieticians, student dieticians, technical personnel, supervisors, persons above the rank of supervisors, stationary engineers, office staff and persons regularly employed not more than twenty four (24) hours per week" (219 employees in unit)

Unit (1902-09-R): "all office and clerical employees employed at Mount Sinai Hospital in the City of Toronto save and except supervisors; persons above the rank of supervisor; secretaries to the following: Executive Director, Associate Executive Directors, Director of Medical Education, Director of Personnel; all other Directors including all Medical Directors, Director of Library Services, Director of Purchasing, Director of Admitting, Director of Communications, Director of Accounting, Director of Housekeeping, Director of Nutrition, Director of Engineering, Director of Medical Records; all Assistant Directors including Assistant Director of Communications, Assistant Director of Housekeeping, Assistant Director Nutrition, and Assistant Director of Engineering; all Department Managers including Manager-Department of Radiological Sciences, Budget Accountant, and Payroll Manager; and all secretaries employed for physicians, for the Hospital Auxiliary, for the Mount Sinai Institute; geographic secretaries; all assistant supervisors in Central Service; office managers; buyers; medical photographers; systems analysts; ledger keepers; accountants; patient representatives; professional medical staff; persons employed in the personnel department in a confidential capacity relating to labour relations; persons regularly employed for not more than twenty four hours per week; students employed during the university or school vacation periods; students employed in a cooperative training programme; students employed as medical dicta trainees; and all persons covered by subsisting collective agreements or certifications" (187 employees in unit)

**0419-10-R:** Canadian Union of Skilled Workers (Applicant) v. Dave Hawkins Line Service Inc. (Respondent) v. IBEW Local 804 (Intervener)

Unit: "all Foremen, Journeyman Linemen (Powerline Technician) - Splicers, Apprentice Linemen Splicers, Groundman/Equipment Operators, Groundman/Drivers, Groundmen, Utilitymen and Foresters performing work within the acknowledged jurisdiction of the Union." (2 employees in unit)

**2960-10-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Turtle Island Recycling Corporation (Respondent)

Unit: "all employees of Turtle Island Recycling Corporation working out of and/or dispatched from the company's Indian Line location at 5990 Indian Line in the city of Mississauga save and except supervisors, those above the rank of supervisor, office and clerical and sales staff" (60 employees in unit)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	67
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	13
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	34
Number of ballots segregated and not counted	13

**3619-10-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Canadian Corps of Commissionaires (Kingston and Region Division) (Respondent)

Unit: "all employees of the Canadian Corps of Commissionaires (Kingston and Region Division) at 216 Ontario Street, 5 Court Street and 175 Rideau Street in the City of Kingston, save and except supervisors and persons above the rank of supervisor." (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	2

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

### **Applications for Certification Withdrawn**

**1081-08-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1103546 Ontario Limited o/a Gravel Doctor Construction & Materials (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener)

**2068-10-R:** Public Service Alliance of Canada (Applicant) v. Weeneebayko Health Ahtuskaywin (Respondent) v. Service Employees International Union Local 1 Canada (Intervener)

**2770-10-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Marine Clean Ltd. (Respondent)

**3580-10-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Stelcrete Industries Ltd. (Respondent)

**3590-10-R:** Canadian Union of Public Employees (Applicant) v. City of Clarence Rockland (Respondent)

### **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**1890-04-R:** I.B.E.W. Construction Council of Ontario (Applicant) v. Crossby Insulations (London) Limited and/or, Crossby Environmental Ltd. and/or, Dewar Insulations Limited and/or, CrossbyDewar Projects Inc. (Respondent) v. Canadian Union of Skilled Workers (Intervener) (*Granted*)

**2084-08-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Elite Building Group Inc., Joe MacKinnon and, 1284316 Ontario Inc. o/a Sentra Contracting (Respondent) v. Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Intervener) (*Withdrawn*)

**2015-09-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Somerlyn Trim and Doors Inc., Calvano Lumber & Trim Co. Ltd., Canpro Trim & Doors 2000 Inc. (Respondent) (*Withdrawn*)

**2091-09-R:** Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America, Local 183 and, Masonry Council of Unions Toronto and Vicinity (Applicant) v. Viewmount Masonry Group Inc., 2169457 Ontario Inc., Aveiro Bricklayers Limited and, Fernar Construction Inc. (Respondent) (*Granted*)

**2803-10-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Big Wax Inc. and, Dial-A-Car Inc. c.o.b. as Executive Car Wash (Respondent) (*Endorsed Settlement*)

**3468-10-R:** International Brotherhood of Painters and Allied Trades, Local 205 (Applicant) v. P. Rogers & Company Limited and, 985152 Ontario Limited o/a Rogers Industrial Services (Respondent) (*Withdrawn*)

**3708-10-R:** The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. LCD Mechanical Inc. and, Gauge Mechanical Services Inc. (Respondent) (*Withdrawn*)

## SALE OF A BUSINESS

**1890-04-R:** I.B.E.W. Construction Council of Ontario (Applicant) v. Crossby Insulations (London) Limited and/or, Crossby Environmental Ltd. and/or, Dewar Insulations Limited and/or, CrossbyDewar Projects Inc. (Respondent) v. Canadian Union of Skilled Workers (Intervener) (*Granted*)

**2084-08-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Elite Building Group Inc., Joe MacKinnon and, 1284316 Ontario Inc. o/a Sentra Contracting (Respondent) v. Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Intervener) (*Withdrawn*)

**1572-09-R:** The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Keewatin-Patricia District School Board and, The Northern District School Area Board (Respondent) (*Granted*)

**1573-09-R:** The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Keewatin-Patricia District School Board and, The Upsala District School Area Board (Respondent) (*Granted*)

**2015-09-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Somerlyn Trim and Doors Inc., Calvano Lumber & Trim Co. Ltd., Canpro Trim & Doors 2000 Inc. (Respondent) (*Withdrawn*)

**2091-09-R:** Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America, Local 183 and, Masonry Council of Unions Toronto and Vicinity (Applicant) v. Viewmount Masonry Group Inc., 2169457 Ontario Inc., Aveiro Bricklayers Limited and, Fernar Construction Inc. (Respondent) (*Granted*)

**2377-10-R:** Canadian Union of Public Employees and its Local 1338-01 and 1338-02 (Applicant) v. BFI Canada Inc. (Respondent) (*Withdrawn*)

**2803-10-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Big Wax Inc. and, Dial-A-Car Inc. c.o.b. as Executive Car Wash (Respondent) (*Endorsed Settlement*)

**3468-10-R:** International Brotherhood of Painters and Allied Trades, Local 205 (Applicant) v. P. Rogers & Company Limited and, 985152 Ontario Limited o/a Rogers Industrial Services (Respondent) (*Withdrawn*)

**3708-10-R:** The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. LCD Mechanical Inc. and, Gauge Mechanical Services Inc. (Respondent) (*Withdrawn*)

## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**2489-10-R:** Public Service Alliance of Canada (Applicant) v. Service Employees International Union Local 1 Canada, Weeneebayko Health Ahtuskaywin (Respondent) (*Endorsed Settlement*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**1171-08-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. 1103546 Ontario Limited o/a Gravel Doctor Construction & Materials (Intervener) (*Withdrawn*)

**3812-09-R:** Nicole Taylor (Applicant) v. United Food and Commercial Workers International Union (UFCW Canada) (Respondent) v. Niagara Falls Tourism Association (Intervener) (*Granted*)

Unit: "all employees at the Niagara Falls Tourism located in the City of Niagara Falls, Ontario save and except Supervisors, those above the rank of Supervisor, Accountant, Executive Assistant, Students and Temporary workers." (8 employees in unit)

**0317-10-R:** Bill Burch (Applicant) v. The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Frontline Contracting Inc. (Intervener) (*Granted*)

Unit: "all journeymen and apprentice carpenters, other than millwrights, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario for whom the Union has bargaining rights." (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	0
Number of ballots segregated and not counted	0

**3502-10-R:** Jeremy Telford (Applicant) v. Service Employees International Union Local 2.0n Brewery, General And Professional Workers Union (Respondent) v. Rexdale Mobile Truck Wash (1981) Inc. (Intervener) (*Dismissed*)

**3857-10-R:** Daniel W. Teat (Applicant) v. Canadian Auto Workers Local 252 (Respondent) v. Mississauga Toyota (Intervener) (*Terminated*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0507-07-U; 1579-07-U:** UNITE HERE (Applicant) v. National Logistics Services (2006) Inc. (Respondent) (*Terminated*)

**1708-07-U:** Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. 792844 Ontario Inc. o/a Secord Construction Ltd. (Respondent) (*Granted*)

**1284-08-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1103546 Ontario Limited o/a Gravel Doctor Construction & Materials and, International Union of Operating Engineers, Local 793 (Respondent) (*Withdrawn*)

**2087-08-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Elite Building Group Inc., Joe MacKinnon and, 1284316 Ontario Inc. o/a Sentra Contracting (Respondent) v. Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Intervener) (*Withdrawn*)

**2822-08-U:** Brenda Ross (Applicant) v. Ontario Public Service Employee's Union (Respondent) v. The Crown in Right of Ontario as represented by the Ministry of Municipal Affairs and Housing (Intervener) (*Dismissed*)

**1238-09-U:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital and, Service Employees International Union, Local 1 Canada (Respondent) (*Withdrawn*)

**1843-09-U:** Donald Upchurch (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 46 (Respondent) (*Dismissed*)

**1991-09-U:** Ontario Public Service Employees Union (Applicant) v. eHealth Ontario (Respondent) (*Withdrawn*)

**3236-09-U; 1975-10-U:** Nima Au (Applicant) v. United Food & Commercial Workers Canada, Local 175 (Respondent) v. Hertz Canada Limited (Intervener) (*Withdrawn*)

**3491-09-U:** Joseph Lynk (Applicant) v. Harold Biso a.k.a. "Butch" Biso,, Sheet Metal Workers International Association Local 51 and, Sheet Metal Workers International Association (Respondent) (*Dismissed*)

**3701-09-U:** I.B.E.W. Electrical Power Council of Ontario (Applicant) v. Crosby-Dewar Projects Inc., Canadian Union of Skilled Workers (Respondent) v. Electrical Power Systems Construction Association (Intervener) (*Granted*)

**0293-10-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Veolia ES Canada Industrial Services Inc. (Chatham Division) (Respondent) (*Withdrawn*)

**0426-10-U:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Casino Rama Services, Inc. (Respondent) (*Withdrawn*)

**0691-10-U; 0891-10-U; 0936-10-U; 1009-10-U:** Kelly Hazelton (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario as represented by the Ministry of Transportation (Intervener); Natalie Simmons-Maiden (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario as represented by the Ministry of Transportation (Intervener); Kelly Hazelton (Applicant) v. Ontario Public Service Employees Union (Respondent); Natalie Simmons-Malden (Applicant) v. Ontario Public Service Employees Union (OPSEU) (Respondent) (*Dismissed*)

**0803-10-U:** Gordon Ostermaier (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) (*Dismissed*)

**1150-10-U:** Ontario Nurses' Association (Applicant) v. Lady Isabelle Nursing Home (Respondent) (*Withdrawn*)

**1193-10-U:** The Communications, Energy and Paperworkers Union, Local 266 (Applicant) v. St. Lawrence Cement Inc., carrying on business as Dufferin Aggregates (Respondent) (*Withdrawn*)

**1326-10-U:** Roselo M. Causapin (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 13571 (Respondent) (*Dismissed*)

**1392-10-U:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. 1704608 Ontario Inc. (Respondent) (*Withdrawn*)

**1889-10-U:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 (Applicant) v. Marvelle Mechanical Inc. (Respondent) (*Withdrawn*)

**1995-10-U:** Douglas Brennan (Applicant) v. Teamsters Local Union No. 879 (Respondent) v. Holcim (Canada) Inc. (Intervener) (*Withdrawn*)

**2008-10-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Green Side Up London Ltd. (Respondent) (*Withdrawn*)

**2239-10-U:** Ontario Public Service Employees Union, on its own behalf and on behalf of Crystal Otto (Applicant) v. Aldaview Services, A division of Tri-County Mennonite Homes (Respondent) (*Withdrawn*)

**2277-10-U; 2933-10-U:** Ontario Public Service Employees Union (Applicant) v. Guelph Independent Living (Respondent) (*Withdrawn*)

**2558-10-U:** Cecil Hussey (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 27 (Respondent) (*Withdrawn*)

**2570-10-U:** Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Applicant) v. Service Master Canada o/a 1715587 Ontario Inc. (Respondent) (*Withdrawn*)

**2786-10-U:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Canadian Ramp Company Inc., Hardcore Skate Parks Inc., John Daman Schuber, Nathan Bemo, and, Carlo Citrigno (Respondent) (*Withdrawn*)

**3002-10-U:** William Cooper (Applicant) v. United Food and Commercial Workers International Union Local 333 (Respondent) v. G45 Secure Solutions (Canada) Ltd. (Intervener) (*Withdrawn*)

**3030-10-U:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Wicks Construction and General Contracting Ltd. and, Brian Ballard (Respondent) (*Withdrawn*)

**3110-10-U:** Alysson Korver (Applicant) v. Canadian Union of Public Employees (Respondent) (*Withdrawn*)

**3174-10-U:** Philip Romain (Applicant) v. The National Automobile, Aerospace, Transportation and General Workers Union of Canada (Canadian Auto Workers - Canada) (Respondent) (*Withdrawn*)

**3491-10-U:** Keshodat Kumar (Applicant) v. Ontario English Catholic Teachers' Association (Respondent) v. Toronto Catholic District School Board (Intervener) (*Dismissed*)

**3583-10-U:** United Food and Commercial Workers Union, Local 1977 (Applicant) v. Zehrs Markets A Division of Zehrmart Ltd.) (Respondent) (*Withdrawn*)

**3612-10-U:** National Organized Workers (Applicant) v. ABC Climate Control Systems Inc. (Respondent) (*Withdrawn*)

**3691-10-U:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Cramahe (Respondent) (*Withdrawn*)

## **APPLICATION FOR INTERIM ORDER**

**3574-10-M:** Christian Labour Association of Canada (Applicant) v. Baxter Corporation (Respondent) (*Dismissed*)

## **JURISDICTIONAL DISPUTES**

**1081-10-JD:** The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS**

**1004-08-M:** Greater Essex County District School Board (Applicant) v. Canadian Union of Public Employees, Local 1348 (Respondent) (*Dismissed*)

## **COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT**

**1969-10-OH:** Daniel Weaver (Applicant) v. PWO Canada Inc. (Respondent) (*Dismissed*)

**2491-10-OH:** Lee Greenbeck (Applicant) v. Pryde Industrial Inc. (Respondent) (*Withdrawn*)

**2589-10-OH:** Carol Seguin (Applicant) v. Reynold's Food Packaging Inc. (Respondent) *(Withdrawn)*

**2596-10-OH:** Nadine Millward (Applicant) v. Town of Bradford West Gwillimbury (Respondent) *(Withdrawn)*

**2816-10-OH:** Raul Aguilera (Applicant) v. Cooper's Iron & Metal Inc. (Respondent) *(Withdrawn)*

**3179-10-OH:** Antonio Faiazza, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7135 (Applicant) v. National Steel Car Ltd. (Respondent) *(Withdrawn)*

**3386-10-OH:** Reg Gale (Applicant) v. Protemp Glass (Respondent) *(Withdrawn)*

**3448-10-OH:** Cathie Marderosian (Applicant) v. Urban Cotton Company (Respondent) *(Withdrawn)*

## CONSTRUCTION INDUSTRY GRIEVANCES

**2198-08-G; 0265-09-G; 0267-09-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. Ontario Power Generation Inc., Aecon Industrial, a Division of Aecon Construction Group Inc. (Respondent); United Association of Journeymen and Apprentices of the Industry of the United States and Canada (Applicant) v. Electrical Association, Ontario Power Generation Inc. (Respondent); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Aecon Industrial Division of Aecon Group Inc. (Respondent) *(Granted)*

**1612-09-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Matera Carpentry Ltd. (Respondent) v. Residential Carpentry Contractors Association of Greater Toronto (Intervener) *(Dismissed)*

**2092-09-G:** Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America, Local 183 and, Masonry Council of Unions Toronto and Vicinity (Applicant) v. Viewmount Masonry Group Inc., 2169457 Ontario Inc., Aveiro Bricklayers Limited and, Fermar Construction Inc. (Respondent) *(Granted)*

**2884-09-G:** Universal Workers Union, L.I.U.N.A., Local 183 (Applicant) v. Delcon Civil Contractors Inc. (Respondent) *(Granted)*

**0555-10-G:** Carpenters District Council of Ontario, Local 2041 (Applicant) v. Diamond System Interiors Ltd. (Respondent) *(Granted)*

**1843-10-G; 3263-10-G:** Carpenters District Council of Ontario, Local 93 (Applicant) v. Maggio Flooring Limited (Respondent); Carpenters District Council of Ontario, Local 93 (Applicant) v. Maggio Flooring Limited (Respondent) *(Granted)*

**2344-10-G:** International Brotherhood of Electrical Workers, Local 120 (Applicant) v. DevGroup Limited and, Powerline Utility Contractors Inc. (Respondent) *(Withdrawn)*

**2374-10-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 800 (Applicant) v. Cecchetto & Sons Limited (Respondent) *(Withdrawn)*

**2715-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. TCG Asphalt & Construction Inc. (A Division of Holcim (Canada) Inc.) (Respondent) *(Granted)*

**2856-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Wasif Yousif c.o.b. as Khider Electromechanical (Respondent) *(Endorsed Settlement)*

**3142-10-G:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Fram Building Group (Respondent) (*Withdrawn*)

**3262-10-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Olin Mechanical Corp. (Respondent) (*Withdrawn*)

**3397-10-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 700 (Applicant) v. K&L Reinforcing (Respondent) (*Granted*)

**3407-10-G:** United Association of Journeypersons and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. AC Plus Inc. (Respondent) (*Endorsed Settlement*)

**3429-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westview Electric Contractors Inc. (Respondent) (*Granted*)

**3435-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Gridd Electrical Services Inc. (Respondent) (*Endorsed Settlement*)

**3506-10-G:** Labourers' International Union of North America, Local 1081 (Applicant) v. Alliance Forming Ltd. (Respondent) (*Granted*)

**3523-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Standard Electric (Toronto 1985) Inc. (Respondent) (*Granted*)

**3524-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Modern Crane Rentals (Respondent) (*Terminated*)

**3528-10-G; 3529-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 683717 Ontario Limited c.o.b. as Electri Can Electrical Contractor (Respondent) (*Granted*)

**3540-10-G:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terra Construction Ltd./Terra Structures Inc. (Respondent) (*Granted*)

**3541-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. T C Contracting Inc. (Respondent) (*Granted*)

**3562-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Regal Electricians Inc. (Respondent) (*Withdrawn*)

**3563-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Tech 3 Inc. (Respondent) (*Granted*)

**3565-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 1086289 Ontario Inc. c.o.b. as Urban Electrical Contractors (Respondent) (*Granted*)

**3578-10-G:** Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Edward C. Kosciuch c.o.b. as All City Drywall & Accoustics/ All City Drywall and Acoustics Inc. (Respondent) (*Granted*)

**3588-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Furtive Network Inc. (Respondent) (*Withdrawn*)

**3589-10-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Kevin Dickie Electric Inc. (Respondent) (*Withdrawn*)

**3591-10-G:** Quality Control Council of Canada (Applicant) v. Team Industrial Services (Respondent) (*Terminated*)

**3594-10-G:** The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Atlantida Painting & Decorating Inc. (Respondent) (*Granted*)

**3622-10-G:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Spallacci Construction Ltd. (Respondent) (*Withdrawn*)

**3628-10-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1568278 Ontario Inc. o/a Basic Industries Glazing (Respondent) (*Granted*)

**3635-10-G:** Labourers' International Union Of North America, Local 625 (Applicant) v. Jemini Construction Ltd. (Respondent) (*Granted*)

**3636-10-G:** Labourers' International Union of North America, Ontario Provincial District Council, Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Inc. (Sub-Foremen Layoff) (Respondent) (*Dismissed*)

**3658-10-G:** United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. CC Group Contracting Inc. (Respondent) (*Granted*)

**3669-10-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1146557 Ontario Inc. o/a Vickers Utility Services and Vickers Electric Limited (Respondent) (*Granted*)

**3680-10-G:** The Brick and Allied Craft Union of Canada and Local 2 and the International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Dalton Engineering and Construction Co. Ltd. (Respondent) (*Withdrawn*)

**3694-10-G:** United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local 527 (Applicant) v. Comstock Canada Ltd. (Respondent) (*Withdrawn*)

**3701-10-G:** The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1568278 Ontario Inc. o/a Basic Industries Glazing (Respondent) (*Granted*)

**3711-10-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1371103 Ontario Inc. o/a Pro Group (Respondent) (*Granted*)

**3714-10-G:** Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. Soubliere Interiors Ltd. (Respondent) (*Granted*)

## **APPEALS - EMPLOYMENT STANDARDS ACT**

**1893-09-ES:** Michelle Huerter (Applicant) v. 911877 Ontario Inc. o/a Bluewater Towing and, Director of Employment Standards (Respondent) (*Dismissed*)

**2964-09-ES:** Jinhe Gao (Applicant) v. Grovieware Technologies Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**3593-09-ES:** 1650990 Ontario Inc. o/a Tate's Inc. (Applicant) v. Shannon McClaskin and, Director of Employment Standards (Respondent) (*Granted*)

**3753-09-ES:** Marimac Inc. (Applicant) v. Hanh Thai and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

- 3987-09-ES:** Chaninni Corporation (Applicant) v. Christina Diamantopoulos and, Director of Employment Standards (Respondent) (*Dismissed*)
- 0054-20-ES:** Dugagjin Gjocaj (Applicant) v. Coco Paving Inc., Director of Employment Standards (Respondent) (*Granted*)
- 0205-10-ES:** Robert Bilodeau o/a Bilodeau's Catering (Applicant) v. Mary Degagne and, Director of Employment Standards (Respondent) (*Dismissed*)
- 0537-20-ES:** Barbara Edwards (Applicant) v. G4S Secure Solutions (Canada) Ltd./G4S Solutions de Securite (Canada) Ltee. and, Director of Employment Standards (Respondent) (*Dismissed*)
- 0552-20-ES:** Lambton Motors Limited (Applicant) v. Michael F. Boone and, Director of Employment Standards (Respondent) (*Terminated*)
- 0727-20-ES:** Gammage Flowers Inc. (Applicant) v. Grant Charron and, Director of Employment Standards (Respondent) (*Withdrawn*)
- 0821-10-ES:** Robert L. Pangborn (Applicant) v. Human Resource Capital Group Inc./ Groupe Capital De Ressource Humaine Inc. o/a Spherion and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0889-10-ES:** Corktown Designs Inc. Operating as Bergo Design (Applicant) v. Corin Pinto, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 1084-10-ES:** Mills and Manufacturing Acrylic Products Limited (Applicant) v. Dennis Kloepfer and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 1113-10-ES:** Bobby Bhar, a director of Children's Corner Day Nursery Inc. o/a Children's Corner Day Nursery (Applicant) v. Chandelle Pratt and, Director of Employment Standards (Respondent) (*Granted*)
- 1231-10-ES:** Dollar 4 Dollar Inc. (Applicant) v. Nicole Briand and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 1249-10-ES:** 1675890 Ontario Limited (Applicant) v. Greg Houle, Director of Employment Standards (Respondent) (*Dismissed*)
- 1256-10-ES:** 2027893 Ontario Inc. (Applicant) v. Mr. Joseph Baggetta, Director of Employment Standards (Respondent) (*Granted*)
- 1297-10-ES:** Camis Inc. (Applicant) v. Kristin Hunt and, Director of Employment Standards (Respondent) (*Dismissed*)
- 1299-10-ES:** Jeff Cousineau (Applicant) v. 1510610 Ontario Inc. o/a Central Welding & Iron Works and, Director of Employment Standards (Respondent) (*Dismissed*)
- 1413-10-ES:** Tina McEwin (Applicant) v. Mumby Insurance Brokers Incorporated and, Director of Employment Standards (Respondent) (*Granted*)
- 1559-10-ES; 1561-10-ES; 1566-10-ES; 1566-10-ES:** Yasir Mebmood, a Director of Aiwahid Inc. (Applicant) v. Tiffany Innes and, Director of Employment Standards (Respondent); Alwahid Inc. (Applicant) v. William MacDonald and, Director of Employment Standards (Respondent); Alwahid Inc. (Applicant) v. Tiffany Innes and, Director of Employment Standards (Respondent);

**1602-10-ES:** Roger and Marylou Armstrong (Applicant) v. Hidden Valley Resort Park Inc. and, Director of Employment Standards (Respondent) (*Dismissed*)

**1656-10-ES:** Kenneth James Mills (Applicant) v. The Canadian National Institute For The Blind, Director Of Employment Standards (Respondent) (*Endorsed Settlement*)

**1682-10-ES:** David Mans and Brenda Cowen o/a Gryphon Blooms (Applicant) v. Steven Bain and, Director of Employment Standards (Respondent) (*Dismissed*)

**1812-10-ES:** Deena Schiller (Applicant) v. Otrex Communications Inc. o/a Gordongroup, Director of Employment Standards (Respondent) (*Dismissed*)

**1861-10-ES:** 1522625 Ontario Ltd. operating as Tridan Haulage & Excavating (Applicant) v. Alex Forbes and, Director of Employment Standards (Respondent) (*Terminated*)

**1908-10-ES:** Canadian Sterling Corp o/a Need A Car (Applicant) v. Robert Young and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2053-10-ES:** Rutherford Vassell (Applicant) v. 2062847 Ontario Limited O/a Fixture This/ Cda Mfg. Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2109-10-ES:** Harris Management Corporation (Applicant) v. Csilla Szarka and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2122-10-ES:** Innes Associates Professional Corporation Chartered Accountant (Applicant) v. Ruthanne Dick and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2334-10-ES:** A-Rapid Rooter Sewer & Drain Service Inc. (Applicant) v. Joshua Stephen Montgomery and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2339-10-ES:** Exclusive Diamonds Inc. (Applicant) v. Magdalena Wojciechowski and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2342-10-ES:** Canada's Wonderland Company (Applicant) v. Kevin D. Kerr and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2385-10-ES:** Nicola Windrem (Applicant) v. J. F. Moore Lithographers Inc. o/a JF Moore Lithographers and, Director of Employment Standards (Respondent) (*Dismissed*)

**2402-10-ES:** 1070377 Ontario Inc. o/a Nick's Courier (Applicant) v. Tony Tuck and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2428-10-ES:** Allan Metcalfe (Applicant) v. Cherjo Inc., Corporate Benefit Analysts Inc., Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2431-10-ES:** Ms. Fatima Zaari (Applicant) v. Sandalwood Suites Hotel Toronto Airport, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2441-10-ES:** Nartech Metal Products Ltd. (Applicant) v. Bryan Iredale and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**2522-10-ES:** Upwardor Corp. (Applicant) v. Ronald Black, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

- 2528-10-ES:** Berlin Concrete Ltd. (Applicant) v. Joseph Dunn and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2681-10-ES:** Devinder Kang (Applicant) v. Five Star Rags Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2682-10-ES:** Abdul Maroof Khamush (Applicant) v. 1087549 Ontario Inc. o/a Jimmy the Greek and, Director of Employment Standards (Respondent) *(Dismissed)*
- 2685-10-ES:** Frederick F. Carison (Applicant) v. Hugomark Construction Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2686-10-ES:** Stephanie Overholt (Applicant) v. 2174639 Ontario Ltd. o/a Honey's Beestro and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2736-10-ES:** Hui Ting Wang (Applicant) v. Circuit Centre Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2755-10-ES:** 1697558 Ontario Inc. o/a Sushi Eaton (Applicant) v. Jian Jin 10u and, Director of Employment Standards (Respondent) *(Dismissed)*
- 2768-10-ES:** Multy Home LP (Applicant) v. Ricardo Velez and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2810-10-ES:** Touch up in a Flash Inc. (Applicant) v. Lynn Langlois and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2822-10-ES:** AddisonMckee Canada ULC (Applicant) v. Joel D. Lynn and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2823-10-ES:** Marshall Forbes Trucking Inc. and Marshall ForbesTransport Services Inc. (Applicant) v. Wayne Perry and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2824-10-ES:** Marshall Forbes Trucking Inc. and Marshall ForbesTransport Services Inc. (Applicant) v. Lisa Wicklum and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 2859-10-ES:** Federal Security Agency Corporation (Applicant) v. Thivakaramoorthy Kathiravelu and, Director of Employment Standards (Respondent) *(Dismissed)*
- 2934-10-ES:** Alan Belerique (Applicant) v. Intercon Security Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 3008-10-ES:** Rosaire Matteau (Applicant) v. Superior Custom Trailers Limited, Director of Employment Standards (Respondent) *(Dismissed)*
- 3010-10-ES:** Mike Beska (Applicant) v. Wright Auto Sales Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 3014-10-ES:** Anna Farberova (Applicant) v. North American Search Group Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*
- 3037-10-ES:** Gloria Rodgers Hill (Applicant) v. Pan Group Corporation/Pan Group Properties and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

- 3041-10-ES:** 1491248 Ontario Ltd. o/a National Decor Painting and Decorating operating as National Decor (Applicant) v. Petrit Grvalla and, Director of Employment Standards (Respondent) (*Dismissed*)
- 3043-10-ES:** Sally Lynn Tanguay (Applicant) v. IMT Corp and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3045-10-ES:** Keiper Limited (Applicant) v. Nicole Thompson and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3077-10-ES:** Jeffrey Morrissey (Applicant) v. 1765978 Ontario Inc. o/a Meineke Car Care, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3084-10-ES:** Yuke Li (Applicant) v. Li's China House Inc., Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3093-10-ES:** Norma Beaudoin (Applicant) v. McNicol Stevenson Limited o/a Exposystems Canada, and Director of Employment Standards (Respondent) (*Terminated*)
- 3186-10-ES:** Kee Management Solutions Inc. (Applicant) v. Grant Taylor and, Director of Employment Standards (Respondent) (*Dismissed*)
- 3229-10-ES:** Charlie Wei Song (Applicant) v. 2160156 Ontario Inc. o/a Golden Griddle Family Restaurant, and Director of Employment Standards (Respondent) (*Dismissed*)
- 3233-10-ES:** Ardi Inc. operating as Ardi Inc. (Applicant) v. Santana Marsia and, Director of Employment Standards (Respondent) (*Terminated*)
- 3237-10-ES:** Stoeckli Organics operating as Stoeckli Organics (Applicant) v. Ulrike Solf and, Director of Employment Standards (Respondent) (*Dismissed*)
- 3252-10-ES:** Transport Training Centres of Canada (Applicant) v. Shawn Smith and, Director of Employment Standards (Respondent) (*Terminated*)
- 3393-10-ES:** 2080929 Ontario Ltd. o/a Trattoria . Cafe Novita (Applicant) v. Paulo Soares and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3424-10-ES:** 1599448 Ontario Inc. o/a TLC Rest Home (Applicant) v. Liudmila Denisova, and Director of Employment Standards (Respondent) (*Dismissed*)
- 3434-10-ES:** Alexander Litvak (Applicant) v. Nexus Protective Services Ltd., Director of Employment Standards (Respondent) (*Terminated*)
- 3436-10-ES:** Avalanche Contracting Inc. (Applicant) v. Director of Employment Standards, Marco S Manteiga (Respondent) (*Terminated*)
- 3442-10-ES:** William Hanna (Applicant) v. Knights on Guard Security Surveillance Systems Corporation, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3443-10-ES:** Efreem Nega (Applicant) v. Precise Parklink Inc., and Director of Employment Standards (Respondent) (*Withdrawn*)
- 3453-10-ES:** Master Mechanic 990305 Ont. Ltd. (Applicant) v. Robert White and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**3479-10-ES:** Better Image Autobody Artists (Applicant) v. Kevin Billings, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

**3484-10-ES:** Barry Van Chirhin operating as Arctic Heating & Cooling (Applicant) v. Tracey Chirin and, Director of Employment Standards (Respondent) (*Terminated*)

**3555-10-ES; 3556-10-ES:** Evergreen Retirement Home Ltd. (Applicant) v. Caroline McNamara and, Director of Employment Standards (Respondent); Evergreen Retirement Home Ltd. (Applicant) v. Maureen Rexe and, Director of Employment Standards (Respondent) (*Dismissed*)

**3557-10-ES:** Donna Grossi (Applicant) v. York Lanes Health Centre Limited and, Director of Employment Standards (Respondent) (*Withdrawn*)

**3690-10-ES:** Peninsula Security Services Ltd. (Applicant) v. Greg Filson and, Director of Employment Standards (Respondent) (*Terminated*)

**3717-10-ES:** People Store Staffing Solutions Inc. (Applicant) v. Kayla Shepherd and, Director of Employment Standards (Respondent) (*Terminated*)

**3718-10-ES:** Peter Husted, a Director of Advanced Surface Treatments Inc. (Applicant) v. Director of Employment Standards (Respondent) (*Terminated*)

## **APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT**

**1633-09-HS:** Ontario Nurses' Association (Applicant) v. London Health Sciences Centre, Beth Nethercott, Inspector (Respondent) (*Withdrawn*)

**0023-10-HS:** Bradley Bros. Ltd (Applicant) v. Patrick Rancourt and, Douglas Landry, Inspector (Respondent) (*Withdrawn*)

**2547-10-HS:** Robert Bruce Brough (Applicant) v. Ministry of Community Safety and Correctional Services (Respondent) (*Withdrawn*)

**2767-10-HS:** Four-O-One Electric Ltd. (Applicant) v. Charles-Etienne Dubois and, Julien Pierre and, Dany Guillotte and, Eric Raymond and, Lynn McNabb, Inspector (Respondent) (*Withdrawn*)

## **PUBLIC SECTOR COMPENSATION RESTRAINT TO PROTECT PUBLIC SERVICES ACT, 2010**

**3605-10-RB:** Community Resource Connections of Toronto (Applicant) v. Louise Nimigon, Vaughn Robertson-Lyon, Vidya Fraser, Vesna Milinkovic, Amanda Hui, Selena Lin, Sri Sinnathamby, Lily Xie, The Minister of Finance (Respondent) (*Granted*)

## **FIRST AGREEMENT - DIRECTION**

**2935-10-FC:** Ontario Public Service Employees Union (Applicant) v. Guelph Independent Living (Respondent) (*Withdrawn*)

**3552-10-FC:** Universal Workers' Union, Labourers International Union of North America, Local 183 (Applicant) v. Fandor Homes Inc. and Fandor Homes (Vintage) Inc. (Respondent) (*Granted*)

## PAY EQUITY ACT

**0968-07-PE:** Ontario Public Service Employees' Union Local 479 (Applicant) v. Royal Ottawa Health Care Group (Respondent) (*Withdrawn*)

**2325-08-PE; 2326-08-PE:** Dana Salvador (Applicant) v. Lear Corporation, Windsor Assembly (Respondent); Lear Corporation Windsor (Applicant) v. Dana Salvador (Respondent) (*Withdrawn*)

**3046-10-PE:** The Moosonee Native Friendship Centre (Applicant) v. Employees of the Employer not represented by a bargaining agent (Respondent) (*Terminated*)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**4580-04-G:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Granted*)

**1092-09-R; 1131-09-R; 1132-09-R; 1133-09-R:** Ontario Workers' Union (Applicant) v. Humber River Regional Hospital (Respondent) v. Service Employees International Union, Local 1 Canada (Intervenor) (*Dismissed*)

**1612-09-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Matera Carpentry Ltd. (Respondent) v. Residential Carpentry Contractors Association of Greater Toronto (Intervenor) (*Dismissed*)

**1769-09-U:** Carlton Samuels (Applicant) v. Canadian Union of Public Employees, Local 4400 (Respondent) (*Dismissed*)

**3036-09-U:** Jamie Denis (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 455 (Respondent) (*Dismissed*)

**0841-10-ES:** MMCC Solutions Inc. o/a Teleperformance Canada (Applicant) v. Leslie Munro and, Director of Employment Standards (Respondent) (*Granted*)

**1431-10-R:** The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 663 (Applicant) v. Precision Concepts Group Inc. (Respondent) (*Dismissed*)

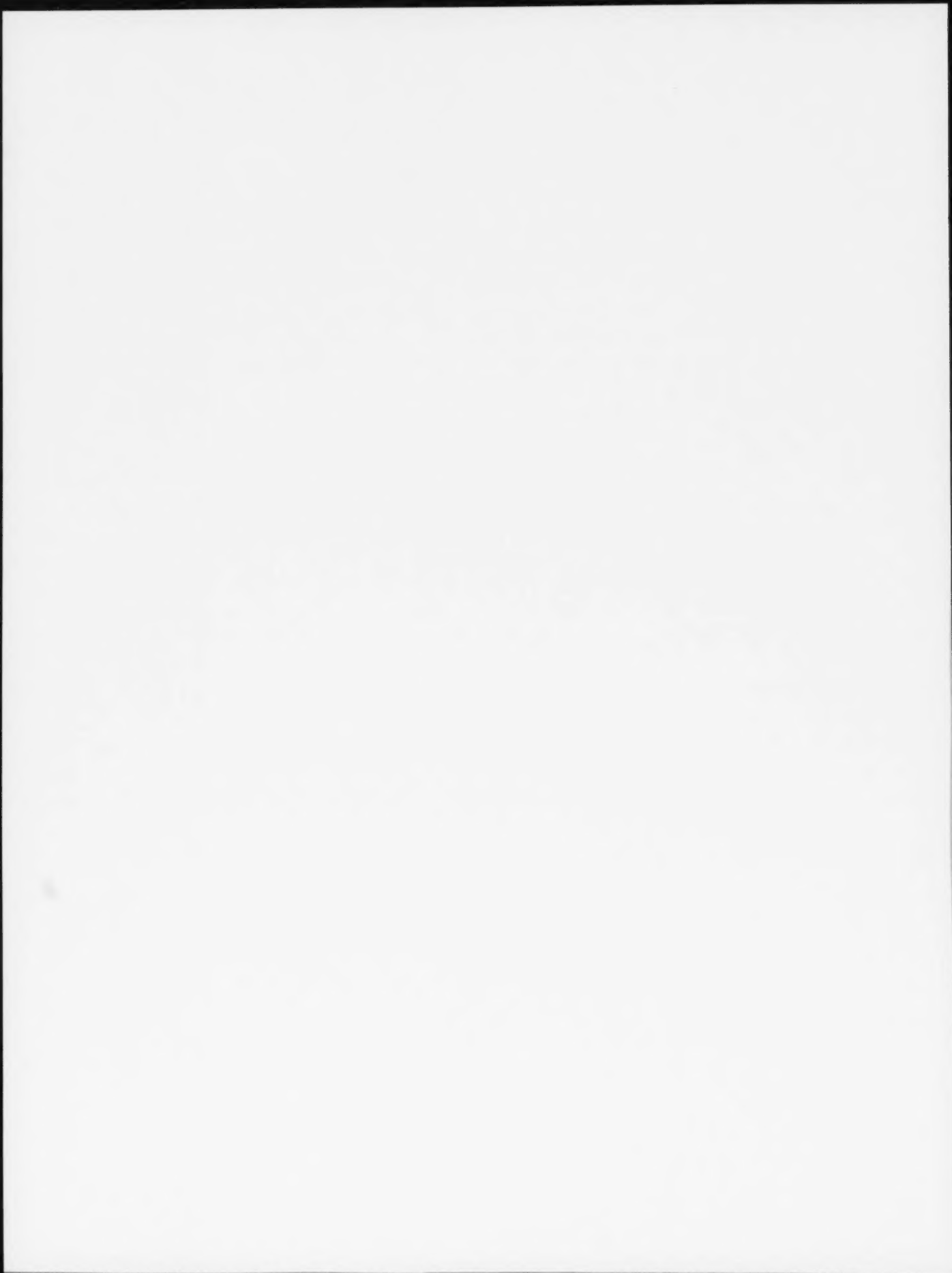
**2755-10-ES:** 1697558 Ontario Inc. o/a Sushi Eaton (Applicant) v. Jian Jin 10u and, Director of Employment Standards (Respondent) (*Dismissed*)

**2996-10-R:** United Food and Commercial Workers Canada, Local 1000A (Applicant) v. LensCrafters International, Inc. (Respondent) (*Dismissed*)

**3233-10-ES:** Ardi Inc. operating as Ardi Inc. (Applicant) v. Santana Marsia and, Director of Employment Standards (Respondent) (*Dismissed*)

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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MARCH 2011

### APPLICATIONS FOR CERTIFICATION

#### Bargaining Agents Certified Without Vote

**0035-09-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Kirbie Group Inc. (Respondent)

Unit: "all construction labourers in the employ of Kirbie Group Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Kirbie Group Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**1742-10-R:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. 2152309 Ontario Inc. o/a Perfection Plus Drywall & Acoustics, 2212807 Ontario Inc. o/a Perfection Plus Homes, Perfection Plus Drywall & Acoustics (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 2152309 Ontario Inc. o/a Perfection Plus Drywall & Acoustics and 2212807 Ontario Inc. o/a Perfection Plus Homes in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 2152309 Ontario Inc. o/a Perfection Plus Drywall & Acoustics and 2212807 Ontario Inc. o/a Perfection Plus Homes in all sectors of the construction industry in within a radius of 33 kilometers (approximately 20 miles) of the North Bay post office, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**2030-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 6167322 Canada Inc. o/a Pro Surface Epoxy (Respondent)

Unit: "all construction labourers in the employ of 6167322 Canada Inc. o/a Pro Surface Epoxy in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of 6167322 Canada Inc. o/a Pro Surface Epoxy in all sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, the City of Ottawa and the United Counties of Prescott and Russell, the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**2126-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cambridge Construction of Ottawa Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Cambridge Construction of Ottawa Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Cambridge Construction of Ottawa Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial,

commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

**2370-10-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Dods Electric Ltd. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Dods Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Dods Electric Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2721-10-R:** International Union of Operating Engineers, Local 793 (Applicant) v. North West Installations Inc. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of cranes, shovels, bulldozers or similar equipment in the employ of North West Installations Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of cranes, shovels, bulldozers or similar equipment in the employ of North West Installations Inc. in all sectors of the construction industry in the District of Kenora including the Patricia portion, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**3712-10-R:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. James Gregory Gouldburn c.o.b. as Gouldburn Professional Painting (Respondent)

Unit: "all painters and painters' apprentices in the employ of James Gregory Gouldburn c.o.b. as Gouldburn Professional Painting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of James Gregory Gouldburn c.o.b. as Gouldburn Professional Painting in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

**3727-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sturgeon Falls Brush & Contracting Limited (Respondent) v. Labourers' International Union of North America, Local 493 (Intervener)

Unit: "all carpenters and carpenters' apprentices in the employ of Sturgeon Falls Brush & Contracting Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non working foreman." (4 employees in unit)

**3962-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Can-Sky Roofing & Sheet Metal Inc. (Respondent) v. Sheet Metal Workers' International Association Local 30 (Intervener)

Unit: "all employees engaged in the application of shingles and other roofing material as well as metal men in the employ of Can-Sky Roofing & Sheet Metal Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of

Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, and persons above the rank of non-working foreman" (4 employees in unit) Unit #2: "all roofers and roofers' apprentices in the employ of Can-Sky Roofing & Sheet Metal Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**4203-10-R:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. J. Bray Masonry & General Construction Ltd. (Respondent)

Unit: "all bricklayers, bricklayers' apprentices and construction labourers in the employ of J. Bray Masonry & General Construction Ltd. in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

### **Bargaining Agents Certified Subsequent to Vote**

**2496-08-R:** UNITE HERE (Applicant) v. Five Brothers Hospitality Partnership Limited c.o.b. as Holiday Inn St. Catharines (Respondent)

Unit: "all employees of Five Brothers Hospitality Partnership Limited c.o.b. as Holiday Inn St. Catharines at 2 North Service Road, St. Catharines, Ontario, save and except: supervisors, those above the rank of supervisor, the executive chef, sous chef, front desk employees, office and clerical staff" (60 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	36
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	35
Number of ballots segregated and not counted	0

**0344-10-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Medical Laboratories of Windsor Limited (Respondent)

Unit: "all employees of Medical Laboratories of Windsor Limited in the City of Windsor, the Town of Tecumseh, and the Municipality of Leamington, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (110 employees in unit)

Number of names of persons on revised voters' list	115
Number of persons who cast ballots	111
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	100
Number of segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	54
Number of ballots marked against applicant	49
Number of ballots segregated and not counted	8

**2482-10-R: Workers United Ontario Council (Applicant) v. Winners Merchants International L.P. (Respondent) v. UNITE HERE (Intervener)**

Unit: "all general warehouse employees of Winners Merchants Inc. distribution centres in Ontario save and except Supervisors, persons above the rank of Supervisor, agency and temporary employees, all employees of retail outlets, office and sales staff, data centre employees, Merchandise Controllers, employees employed in a confidential capacity in mailers relating to labour relations, supplies and security staff." (1400 employees in unit)(*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	115
Number of persons who cast ballots	111
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	100
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	10
Number of ballots marked in favour of applicant	703
Number of ballots marked against applicant	440
Number of ballots segregated and not counted	0

**2765-10-R: United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. Peel Condominium Corporation Number 57 (Respondent)**

Unit: "all Superintendents or assistant Superintendents employed by Peel Condominium Corporation Number 57 in the regional municipality of Peel." (2 employees in unit)(*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

**2965-10-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Source Security and Investigations Inc. (Respondent)**

Unit: "all employees of Source Security and Investigations Inc. at 81 Resources Road, 125 Resources Road, 354 George St. and 311 Jarvis St., in the City of Toronto, save and except supervisors, persons above the rank of supervisor, (office, clerical and sales staff)" (30 employees in unit)(*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	31
Number of ballots excluding segregated ballots cast by persons whose names appear	18

on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	13

**3458-10-R:** Service Employees International Union Local 1 Canada (Applicant) v. Sunnybrook Health Sciences Centre (Respondent)

Unit: "All employees in the Health Data Resources Department of Sunnybrook Health Sciences Centre, save and except supervisors, persons above the rank of supervisor and persons already represented by a trade union." (24 employees in unit)

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	2

**3603-10-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Compass Group Canada Ltd. (Respondent)

Unit: "all employees of Compass Group Canada Ltd., engaged in its cafeteria food services at the Main Campus of Humber College (110 Carrier Drive, 203 Humber College Blvd. and 205 Humber College Blvd.), in the City of Toronto, save and except supervisors, persons above the rank of supervisor, executive chef and office and clerical staff." (125 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	133
Number of persons who cast ballots	101
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	89
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	66
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	12

**3617-10-R:** Ontario Nurses' Association (Applicant) v. OMNI Health Care Limited Partnership operating as Garden Terrace (Respondent) v. Canadian Union of Public Employees (Intervener)

Unit: "all registered nurses and nurses with a Temporary Certificate of Registration engaged in a nursing capacity at OMNI Health Care Limited Partnership operating as Garden Terrace at 100 Aird Place, Kanata, Ontario, save and except Assistant Director of Care and persons above the rank of Assistant Director of Care and employees in bargaining units for which any trade union held bargaining rights as of February 1, 2011, being the date of application" (12 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

**3626-10-R:** Service Employees International Union Local 1 Canada (Applicant) v. Island View Suites Limited (Respondent)

Unit: "all employees of Island View Suites Limited in the city of Amprior save and except supervisor, persons above the rank of supervisor and office and clerical." (36 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

**3634-10-R:** Ontario Nurses' Association (Applicant) v. Providence Care Centre, Providence Manor Long-Term Care Home (Respondent)

Unit: "all Registered Nurses and Nurses with a temporary Certificate of Registration employed in a nursing capacity at Providence Care Centre, Providence Manor Long-Term Care Home, Kingston Ontario, save and except Director of Care, persons above the rank of Director of Care and Coordinator, Occupational and Infection Control and pending the resolution of the disputed classifications, excluding as well the Registered Nurse Manager and persons above the rank of Registered Nurse Manager." (16 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9

Number of ballots marked against applicant	1
Number of ballots segregated and not counted	5

**3653-10-R:** Workers United Ontario Council (Applicant) v. Behar Cline Manufacturing Ltd. (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of Behar Cline Manufacturing Ltd. in Guelph, Ontario, excluding executive supervisory employees, experimental and professional employees, quality inspectors, technical and administrative employees, clerical and office employees, or other employees exercising a managerial function or employed in a confidential capacity" (23 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

**3681-10-R:** Teamsters Local Union No. 879 (Applicant) v. Onsort Material Management Inc. C Respondent)

Unit: "all employees of the employer working at Onsort Material Management Inc. in the City of London, Ontario, save and except supervisors and those above the rank of supervisors, office staff and sales staff" (130 employees in unit)

Number of names of persons on revised voters' list	134
Number of persons who cast ballots	136
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	123
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	13
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	95
Number of ballots marked against applicant	28
Number of ballots segregated and not counted	13

**3704-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Kleenway Building Maintenance Services Inc. (Respondent)

Unit: "all employees of Kleenway Building Maintenance Services Inc. employed at Scarborough Civic Centre, 150 Borough Drive; Scarborough Court House, 1530 Markham Road; Scarborough Animal Centre, 821 Progress Avenue; East District Fire Training Centre, 4560 Sheppard Avenue East; Squirrel's Nest Child Care Centre, 1305 Ellesmere Road; Morningside Yard, 891 Morningside Avenue; Ellesmere Yard Building A, 1050 Ellesmere Road; Ellesmere Yard Building C, 1050 Ellesmere Road; Ellesmere Yard Building D, 1050 Ellesmere Road; Toronto Water Tiffield, 60 Tiffield Road; Toronto Water Yard, 435 Kipling Avenue; Toronto Water Clark Filtration Plant, 45 Twenty Third Street; Toronto Water High Level Pumping Station, 235 Cottingham Street; Toronto Water Laboratory, 30 Dee Avenue; Toronto Water Ashbridges Bay Administration Building, 9 Leslie Street; Toronto Water Ashbridges Bay Security Building, 9 Leslie Street; Toronto Water Merton, 275 Merton Street; Toronto Water Highland Creek Treatment Plant, 51 Beechgrove Drive; Toronto Transportation Yard, 8270 Sheppard Avenue East; and Toronto

Water Commissioners Yard, 545 Commissioners Street, in the City of Toronto, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff." (33 employees in unit)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	26
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	11

**3770-10-R:** The Canadian Union of Public Employees (Applicant) v. Bloorview School Authority (Respondent)

Unit: "all office, clerical, secretarial, Communications Disorder Assistants and Lunchroom Supervisors employed by the Bloorview School Authority in the City of Toronto, save and except supervisors, persons above the rank of supervisor and employees for whom a union held bargaining rights as of the date of application for certification" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

**3793-10-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Empire Living Centre Inc. (Respondent)

Unit: "all employees of Empire Living Centre Inc. at 425 Fraser Street and 160 McIntyre Street West in the City of North Bay, save and except supervisors, reception staff, Registered Practical Nurses and persons above the rank of supervisor" (24 employees in unit)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	3

**3850-10-R:** National Organized Workers (Applicant) v. XS Cargo GP Inc. (Respondent)

Unit: "all employees of XS Cargo GP Inc. employed in or out of 7400 Bramalea Road Unit A, in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, clerical, engineering and sales staff" (16 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	3

**3871-10-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Golden Cut Poultry Ltd. (Respondent)

Unit: "all employees of Golden Cut Poultry Ltd., in the City of Toronto, Ontario, save and except supervisors, persons above the rank of supervisor, quality control, office, clerical and sales staff" (140 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	133
Number of persons who cast ballots	121
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	116
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	102
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	5

**3975-10-R:** Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. Chartwell Classic Robert Speck Retirement Residence (Respondent)

Unit: "all employees of Chartwell Classic Robert Speck Retirement Residence, at 100 Robert Speck Parkway, in the City of Mississauga, Ontario, save and except Volunteers, Maintenance, Registered Nurses, Supervisors and those above the rank of Supervisor, and pending resolution of the dispute respecting their inclusion, excluding as well concierge and registered practical nurses" (27 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

**4024-10-R: Canadian Union of Public Employees (Applicant) v. University of Guelph (Respondent)**

Unit: "all interims employed in the Library at the University of Guelph in the City of Guelph for not more than twenty-four (24) hours per week, save and except supervisors and persons above the rank of supervisor, students and those persons for whom any other trade union holds bargaining rights" (13 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

**4030-10-R: Christian Labour Association of Canada (Applicant) v. Tomlinson Environmental Services Ltd (Respondent)**

Unit: "all residential and municipal waste collection drivers/loaders employed by Tomlinson Environmental Services Ltd. at or out of the city of Pembroke, save and except supervisors, persons above the rank of supervisor, office, sales and clerical staff" (10 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	2

**4042-10-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. 744457 Ontario Ltd. o/a Veterans Taxi (Respondent)**

Unit: "all employees of 744457 Ontario Ltd. o/a Veterans Taxi in the City of Hamilton, save and except supervisors, persons above the rank of supervisor, dispatchers and managers" (23 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	38
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	
Number of ballots marked in favour of applicant	20

Number of ballots marked against applicant	6
Number of ballots segregated and not counted	12

**4048-10-R:** Teamsters Local Union No. 91 (Applicant) v. Housekeepers of Canada Inc. (Respondent)

Unit: "all employees of Housekeepers of Canada Inc. working at the Cataragui Town Centre, 945 Gardiners Road, Kingston, Ontario, save and except supervisors, persons above the rank of supervisor, office staff, sales staff and clerks" (11 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

**4066-10-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. 6N Silicon Inc. (Respondent)

Unit: "all employees of 6N Silicon Inc. in the City of Vaughan, save and except supervisors and those above the rank of supervisor, research and development technicians, research and development scientists, engineers and office, clerical and sales staff" (110 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	134
Number of persons who cast ballots	
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	124
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	
Number of ballots marked in favour of applicant	74
Number of ballots marked against applicant	49
Number of ballots segregated and not counted	5

**4096-10-R:** Canadian Union of Public Employees (Applicant) v. The University of Western Ontario (Respondent)

Unit: "all employees in the hospitality service department at the University of Western Ontario in the City of London regularly employed for not more than 24 hours per week, save and except Managers and persons above the rank of Manager, office and clerical staff and those persons already represented by a trade union" (300 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	283
Number of persons who cast ballots	125
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	123
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of applicant	76

Number of ballots marked against applicant	47
Number of ballots segregated and not counted	2

**4097-10-R:** The Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Township of Killaloe, Hagarty and Richards (Respondent)

Unit: "all volunteer firefighters engaged in the fire service of the Township of Killaloe, Hagarty and Richards, working in and out of the Township of Killaloe, Hagarty and Richards, save and except the Fire Chief, Deputy Fire Chief, persons above the rank of Deputy Fire Chief, office and clerical staff and persons covered by an existing collective agreement" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	

#### **Applications for Certification Dismissed Subsequent to Vote**

**3311-09-R:** Workers United Ontario Council (Applicant) v. Niagara 21st Group c.o.b. as Courtyard Marriott (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of Niagara 21st Group Inc., c.o.b. as the Courtyard by Marriott, at its 5950 Victoria Avenue, in the City of Niagara Falls, Ontario location, save and except supervisors, those above the rank of supervisor, human resources staff, accounting staff, information technology staff, front desk staff, receiving staff, courier staff, administrative staff and restaurant and kitchen employees, including all employees employed at TGI Fridays, the Keg and the Cafe." (60 employees in unit)

**2091-10-R:** United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Niagara 21st Group Inc. o/a Marriott Fallsview-Niagara Falls (Respondent)

Unit: "all employees of 2253100 Ontario Inc. o/a Marriott Fallsview located at 6740 Fallsview Boulevard, Niagara Falls, Ontario, save and except supervisors and those above the rank of supervisor, and save and except employees employed in positions, departments or classifications described as: Banquet, Restaurant, Room Service, Labour or Labourers, Spa, Reservations, AYS (Switchboard), Tourism, Starbucks, Gift Shop, Bellmen, Doormen, Concierges, IT Computer, Front Desk, Night Auditors, Sales, Conference Service Department(s), Marketing Staff, Receiving Staff, Security Staff, Office and Clerical Staff, Students, and any other employees covered by any other existing collective agreement" (104 employees in unit)

Number of names of persons on revised voters' list	106
Number of persons who cast ballots	97
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	95
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	21

Number of ballots marked against applicant	75
Number of ballots segregated and not counted	1

**3070-10-R:** United Food and Commercial Workers International Union, Local 333 (Applicant) v. Russell Security Services Inc. (Respondent)

Unit: "all employees of the Responding Party at 2000 Boundary Road, Whitby, Ontario save and except supervisors, persons above the rank of supervisors" (7 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	0

**3071-10-R:** United Food and Commercial Workers International Union, Local 333 (Applicant) v. Russell Security Services Inc. (Respondent)

Unit: "all employees of the Responding party at LCBO Warehouse, 955 Wilton Grove, London, Ontario save and except supervisors, persons above the rank of supervisors" (5 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

**3870-10-R:** National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada) (Applicant) v. Ontario Lottery and Gaming Corporation c.o.b. as Casino Sault Ste. Marie (Respondent)

Unit: "all employees of Ontario Lottery and Gaming Corporation carrying on business as Casino Sault Ste. Marie in the City of Sault Ste. Marie, save and except supervisors and persons above the rank of supervisor, summer students, security and surveillance staff and office, clerical, audit, payroll and scheduling employees" (196 employees in unit)

Number of names of persons on revised voters' list	196
Number of persons who cast ballots	184
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	182
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	62
Number of ballots marked against applicant	120
Number of ballots segregated and not counted	2

**4095-10-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Hanwha L & C Canada Inc. (Respondent)

Unit: "all employees of Hanwha L & C Canada Inc. in the City of London, Ontario, save and except supervisors, persons above the rank of supervisors, office, administrative, clerical and technical staff." (57 employees in unit)

Number of names of persons on revised voters' list	67
Number of persons who cast ballots	64
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	59
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	32
Number of ballots segregated and not counted	5

#### **Applications for Certification Withdrawn**

**0674-08-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Steelcon Fabrication Inc., Steelcon Properties Inc., Steelcon Holdings Inc. and, Pro-Con Steel Erectors Ltd. (Respondent)

**1135-10-R:** International Brotherhood of Electrical Workers, Local 303 (Applicant) v. Zelus Material Handling Inc. (Respondent) v. Canadian Union of Skilled Workers (Intervener)

**1600-10-R:** Christian Labour Association of Canada (Applicant) v. JNF Ready Mix Inc. (Respondent) v. Labourers' International Union of North America, Local 1059 (Intervener)

**2411-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. EHV Power ULC and, Infrsource Services (Canada), ULC c.o.b. EHV Power (Respondent) v. International Brotherhood of Electrical Workers, Local 105, International Brotherhood of Electrical Workers, Local 353 (Intervener)

**2556-10-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Maram Building Corp (Respondent)

**3051-10-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Network Site Services Ltd., N.S.S. Holdings Inc. (Respondent)

**3996-10-R:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. DMS Property Management Ltd. (BC Property Maintenance Ltd.) (Respondent)

**4063-10-R:** Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters (Applicant) v. Metrix Ready Mix Ltd. (Respondent)

**4106-10-R:** The Canadian Union of Public Employees (Applicant) v. The Corporation of the Township Georgina (Respondent)

**4131-10-R:** The Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Georgina (Respondent)

**4156-10-R:** Teamsters Local Union 938 (Applicant) v. Vitran Express Canada Inc. (Respondent)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**0945-07-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Steelcon Fabrication Inc., Agent Steel Inc., Steelcon Properties Inc., Steelcon Holdings Inc. and, Pro-Con Steel Erectors Ltd. (Respondent) (*Withdrawn*)

**2230-10-R:** Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America on its own behalf and on behalf of its constituent union Local 93 (Applicant) v. ESM Firestop and Caulking and, Queensway Caulking Ltd. (Respondent) (*Granted*)

**2722-10-R:** Canadian Office and Professional Employees Union Local 343 (Applicant) v. Momentum Credit Union cob as Hamilton Community Credit Union and, Twin Oak Credit Union (Respondent) (*Dismissed*)

**3773-10-R:** International Union of Bricklayers and Allied Craftworkers, Local 7 (Applicant) v. Foster's Masonry,, Lilika Masonry and, David Foster (Respondent) (*Withdrawn*)

## **SALE OF A BUSINESS**

**0945-07-R:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Steelcon Fabrication Inc., Agent Steel Inc., Steelcon Properties Inc., Steelcon Holdings Inc. and, Pro-Con Steel Erectors Ltd. (Respondent) (*Withdrawn*)

**1568-09-R:** The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Huron - Superior Catholic District School Board and, The Hornepayne Roman Catholic Separate School Board (Respondent) (*Withdrawn*)

**1569-09-R:** The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Algoma District School Board and, The Missarenda District School Area Board (Respondent) (*Withdrawn*)

**1227-10-R:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) and its Local 9042 (Applicant) v. Magnum Integrated Technologies Inc.; Anker-Holth, a division of Magnum Integrated Technologies Inc., and/or All Companies Operating at 200 First Gulf Boulevard, Brampton, Ontario, 1728262 Ontario Inc. (Respondent) (*Dismissed*)

**2230-10-R:** Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America on its own behalf and on behalf of its constituent union Local 93 (Applicant) v. ESM Firestop and Caulking and, Queensway Caulking Ltd. (Respondent) (*Granted*)

**2722-10-R:** Canadian Office and Professional Employees Union Local 343 (Applicant) v. Momentum Credit Union cob as Hamilton Community Credit Union and, Twin Oak Credit Union (Respondent) (*Dismissed*)

**3773-10-R:** International Union of Bricklayers and Allied Craftworkers, Local 7 (Applicant) v. Foster's Masonry,, Lilika Masonry and, David Foster (Respondent) (*Withdrawn*)

## **UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)**

**0607-09-R:** TIERCON CORP (formerly 1675386 Ontario Inc.) (Applicant) v. Workers United Ontario Council, UNITE HERE International Union and (Respondent) (*Granted*)

**2481-09-R:** Compass Group Canada (Applicant) v. Workers United Ontario Council, UNITE HERE Canada (Respondent) (*Granted*)

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**3728-09-R:** Patricia Yule and Patricia Barlow (Applicant) v. UNITE HERE and its Local 2347 and/or Workers United Ontario Council (Respondent) v. Niagara 21st Group Inc., c.o.b. Courtyard by Marriott (Intervener) (*Dismissed*)

Unit: "all employees of Niagara 21st Group Inc., c.o.b. as the Courtyard by Marriott, at its 5950 Victoria Avenue, in the City of Niagara Falls, Ontario location, save and except supervisors, those above the rank of supervisor, human resources staff, accounting staff, information technology staff, front desk staff, receiving staff, courier staff, administrative staff and restaurant and kitchen employees, including all employees employed at TGI Fridays, the Keg and the Cafe." (56 employees in unit)

**0370-10-R:** Paolo Iafate and Steve Wolfer (Applicant) v. Labourers International Union of North America Ontario Provincial District Council and its affiliates, including LIUNA, Local 506 (Respondent) v. Ferro Canada Inc. (Intervener) (*Granted*)

Unit: "all construction labourers in the employ of Ferro Canada Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of Ferro Canada Inc. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and the County of Simcoe and the District Municipality of Muskoka, save and except non-working foremen and persons above the rank of non-working foreman." (19 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	10
Number of ballots segregated and not counted	0

**2453-10-R:** Owen Sound Transportation Company Marine Engineer Officers (Applicant) v. Canadian Marine Officers Union (Respondent) v. Owen Sound Transportation Company (Intervener) (*Granted*)

Unit: "all employees of the Company comprising of Marine Engineer Officers employed on the M.S. Chi-Cheemaun. In this agreement, Marine Engineer Officers shall mean all Marine Engineer Officers employed by the Company and serving as Engineers on the vessel, but shall not include the Chief Engineer Officers." (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	3
Number of ballots segregated and not counted	0

**3018-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. International Brotherhood of Electrical Workers, Local 105, International Brotherhood of Electrical Workers, Local 353 (Respondent) v. Electrical Trades Bargaining Agency of the Electrical Contractors Association of Ontario, EHV Power ULC (Intervener) (*Withdrawn*)

**3026-10-R:** Christian Labour Association of Canada (Applicant) v. JNF Ready Mix Inc. and, Teamsters Canada, Local Union 879 (Respondent) v. Labourers' International Union of North America, Local 1059 (Intervener) (*Withdrawn*)

**3859-10-R:** Rachel Ayres (Applicant) v. Canadian Office and Professional Employees Union Local 468 (Respondent) v. Unity Project for Relief of Homelessness in London (Intervener) (*Granted*)

Unit: "all employees employed by the Unity Project for the Relief of Homelessness in London in the City of London save and except for the General Manager and students in co-operative education programs and those persons above the rank of General Manager." (17 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	10
Number of ballots segregated and not counted	0

**3863-10-R:** Kenrick Latchman, Douglas Hughes (Applicant) v. International Association of Machinists and Aerospace Workers (Respondent) v. The Corporation of the City of Mississauga (Intervener) (*Dismissed*)

Unit: "all Employees of the Facilities and Property Management Division in the Corporate Services Department of the City of Mississauga at its operations located at 300 City Centre Drive, 301 Burnhamthorpe Road West and 4141 Living Arts Drive save and except supervisors, persons above the rank of supervisors, office workers, sales and security staff" (41 employees in unit)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	21
Number of ballots marked against respondent	14
Number of ballots segregated and not counted	0

**3929-10-R:** Melania M. Atienza, on Behalf of all Employees of Hurley Corporation, Working at 1 Dundas St. W., 20 Queen St. W., 250 Yonge St. and 220 Yonge St. Toronto (Applicant) v. SEIU LOCAL 2 (Respondent) v. Hurley Corporation (Intervener) (*Dismissed*)

**4001-10-R:** The Employees of The Quality Inn & Suites Brantford (Applicant) v. UFCW Local 175 (Respondent) (*Dismissed*)

**4043-10-R:** Frank Zanette and The Employees of Nor Shore Ready Mix Concrete Products Ltd. (Applicant) v. United Steelworkers Local 1-2010 formerly United Steelworkers Local 2693 (Respondent) (*Granted*)

Unit: "all employees engaged on the operations of the Company in the District of Thunder Bay save and except foreman, persons above the rank of foreman, office staff, batchers in the city of Thunder Bay, and persons bound by collective agreements to which the Company is party to." (13 employees in unit)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	11
Number of ballots segregated and not counted	0

**4073-10-R:** Oshawa Durham Rape Crisis Centre (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Granted*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0893-08-U:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Steelcon Fabrication Inc., Steelcon Properties Inc., Steelcon Holdings Inc. and, Pro-Con Steel Erectors Ltd. (Respondent) (*Withdrawn*)

**1727-08-U:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Parkview Excavation Services Inc., 1494282 Ontario Inc. and 1490623 Ontario Inc. o/a Parkview Homes (Respondent) (*Dismissed*)

**1905-08-U:** UNITE HERE (Applicant) v. Five Brothers Hospitality Partnership Limited c.o.b. as Holiday Inn St. Catharines (Respondent) (*Withdrawn*)

**2178-08-U:** Ontario Secondary School Teachers' Federation and its District 9 (Applicant) v. Greater Essex County District School Board and Tim Lauzon and Al Cook (Respondent) (*Withdrawn*)

**0511-09-U:** Faith Howard (Applicant) v. CAW-Canada, Local 414 (Respondent) v. 407 ETR Concession Company Ltd. (Intervener) (*Withdrawn*)

**2361-09-U:** Fay Marc-Ali (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (*Dismissed*)

**2654-09-U:** Triple Seal Ltd., Independent Mirror Industries Inc. (Applicant) v. The United Brotherhood of Retail, Food, Industrial & Service Trades International Union (Respondent) (*Terminated*)

**2701-09-U:** Al Luce (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada and its Local 222 (Respondent) v. Durham Region Transit Commission (Intervener) (*Dismissed*)

**3118-09-U:** Ricardo Bettencourt (Applicant) v. Canadian Union of Public Employees and its Local 2544 (Respondent) v. Peel District School Board (Intervener) (*Withdrawn*)

**3190-09-U:** Tom Jones (Applicant) v. United Food and Commercial Workers Canada, Local 1000A (Respondent) v. 216870 Ontario Limited o/a Malloch's No Frills (Intervener) (*Withdrawn*)

**3197-09-U:** Heather Vadum (McNamara) (Applicant) v. UNITE HERE Local 75 (Respondent) v. Hilton Toronto (Intervener) (*Dismissed*)

**3357-09-U:** Guy De Francesco (Applicant) v. Toronto Civic Employees' Union, Local 416 (Respondent) v. City of Toronto (Intervener) (*Dismissed*)

**3521-09-U:** Eyob Gebereselassie (Applicant) v. United Food & Commercial Workers International Union and (Respondent) (*Dismissed*)

**782-09-U:** Zofia Baczowski (Applicant) v. International Brotherhood of Electrical Workers, Local 773 (Respondent) (*Withdrawn*)

**0238-10-U:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 1249762 Ontario Inc. o/a Mega City Tile (Respondent) (*Withdrawn*)

**0942-10-U:** Anna Colella (Applicant) v. Canadian Union of Public Employees and its Local 1280 (Respondent) v. The Toronto Catholic District School Board (Intervener) (*Dismissed*)

**1051-10-U:** Maria Carlota G. Penas (Applicant) v. Ontario Federation of Health Care Workers, LIUNA Local 1110 (Respondent) v. Cawthra Gardens LTC (Intervener) (*Dismissed*)

**1221-10-U:** Jo-Anne Munday (Applicant) v. Canadian Union of Public Employees (Respondent) (*Dismissed*)

**1226-10-U:** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) and its Local 9042 (Applicant) v. Magnum Integrated Technologies Inc.; Anker-Holth, a division of Magnum Integrated Technologies Inc., and/or All Companies Operating at 200 First Gulf Boulevard, Brampton, Ontario, 1728262 Ontario Inc. (Respondent) (*Dismissed*)

**1265-10-U:** Steelworkers Local 1-1000 (Wood Council) (Applicant) v. Voith Paper Service Canada Inc. (Respondent) (*Withdrawn*)

**1464-10-U:** Tchaka Adofu (Applicant) v. CUPE Local 4358 (Respondent) v. Eva's Initiatives for Homeless Youth (Intervener) (*Dismissed*)

**1482-10-U:** Ivan Kotskulych (Applicant) v. United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 9597 (Respondent) (*Dismissed*)

**1570-10-U:** Marylou Milligan (Applicant) v. Sheet Metal Workers' International Association Local Union 540 (Respondent) v. Dresden Industrial (Intervener) (*Withdrawn*)

**1726-10-U:** Albert Drapeau (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 90 (Respondent) v. Abitibi Bowater (Intervener) (*Dismissed*)

**1871-10-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. JNF Concrete Ltd., JNF Ready Mix Inc. and, Christian Labour Association of Canada (Respondent) (*Withdrawn*)

**2064-10-U:** Kenneth R. Lynch (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) (*Dismissed*)

**2206-10-U:** United Food and Commercial Workers International Union (UFCW CANADA) (Applicant) v. Niagara 21st Group Inc. o/a Marriott Fallsview-Niagara Falls (2253100 Ontario Inc. as per Certification Application) (Respondent) (*Withdrawn*)

**2207-10-U:** Darius A. Masalas (Applicant) v. Toronto Civic Employees' Union and its Local 416, The Canadian Union of Public Employees (Respondent) v. City of Toronto (Intervener) (*Dismissed*)

**2245-10-U:** Les Nagy (Applicant) v. Canadian Auto Workers (CAW), Local 414 (Respondent) v. Metro Ontario Inc. (Intervener) (*Withdrawn*)

**2327-10-U:** Amalgamated Transit Union Local 1573 (Applicant) v. Stock Transportation Ltd. (Respondent) (*Withdrawn*)

**2382-10-U:** Tim Abbott, Glenn Heshka, Dave Filchak, Joann Purcell, Mike Gadsden, Sandee Roelcke, Jim Graves (Applicant) v. Ontario Public Service Employees Union (OPSEU) (Respondent) (*Dismissed*)

**2433-10-U:** International Association of Machinists and Aerospace Workers, Local Lodge 103 (formerly Lodge 1927) (Applicant) v. 1331493 Ontario Limited o/a Elm Management (Respondent) (*Withdrawn*)

**2582-10-U:** Magdalena Loor (Applicant) v. Service Employees' International Union, Local 204 (Respondent) v. Revera Long Term Care Inc. operating as Westside (Intervener) (*Withdrawn*)

**2745-10-U:** UNITE HERE (Applicant) v. Winners International Merchants L.P. (Respondent) v. Workers United Ontario Council (Intervener) (*Withdrawn*)

**2766-10-U:** Daniel McHenry (Applicant) v. Labourers International Union of North America, Local 1089 (Respondent) (*Dismissed*)

**2773-10-U:** Clifford Masonry Limited (Applicant) v. Labourers' International Union of North America, Local 506 and, Saverio Repole and, Glen Chochla (Respondent) (*Withdrawn*)

**2778-10-U:** Ontario Public Service Employees Union (Applicant) v. Oshawa Durham Rape Crisis Centre (Respondent) (*Withdrawn*)

**3292-10-U:** Pravin Ramlackhan (Applicant) v. Teamsters Local Union No. 419 (Respondent) v. Reliable Food Supplies Inc. (Intervener) (*Terminated*)

**3409-10-U:** Labourers' International Union of North America, Local 1089 (Applicant) v. 1684679 Ontario Inc. o/a RC Trucking & Paving and Christie Joseph, Jamie Deleersnyder and Brian Falconer (Respondent) (*Withdrawn*)

**3426-10-U:** Communications, Energy and Paperworkers Union of Canada and its Local 3011 (Applicant) v. The Professional Institute of the Public Service of Canada (Respondent) (*Withdrawn*)

**3483-10-U:** Health Care and Service Workers Union Local 304 affiliated with the Christian Labour Association of Canada (Applicant) v. DUKESUE Inc. (Formerly Senior Care Living Centres Ltd.) o/a Livingstone Manor Retirement Residence (Respondent) (*Withdrawn*)

**3554-10-U:** Ontario Nurses' Association (Applicant) v. Norfolk General Hospital and, The Norfolk Hospital Nursing Home (Respondent) (*Withdrawn*)

**3559-10-U:** Lina Obeng-Yaw (Applicant) v. Ontario Federation of Health Care Workers, LIUNA Local 1110 (Respondent) (*Withdrawn*)

**3640-10-U:** Labourers' International Union of North America, Local 506 (Applicant) v. Royal Building Supplies Ltd., Steve Grande, Frank Grande, and Nancy Grande (Respondent) (*Withdrawn*)

**3683-10-U:** Teamsters Local Union No. 879 (Applicant) v. Onsort Material Management Inc. (Respondent) (*Terminated*)

**3845-10-U:** Peter Cherwonogrodzky (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Withdrawn*)

**3856-10-U:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. Jones Lang Lasalle Real Estate Services Inc./Jones Lang Lasalle Services Immobiliers, Inc. (Respondent) (*Withdrawn*)

**4064-10-U:** Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters (Applicant) v. Metrix Ready Mix Ltd. (Respondent) (*Withdrawn*)

**4224-10-U:** Ontario Public Service Employees Union (Applicant) v. Personal Choice Independent Living (Respondent) (*Withdrawn*)

## APPLICATION FOR INTERIM ORDER

3333-10-M; 3334-10-M; 3335-10-M; 3336-10-M; 3337-10-M; 3338-10-M; 3339-10-M; 3340-10-M; 3341-10-M; 3342-10-M; 3343-10-M; 3344-10-M; 3345-10-M; 3346-10-M; 3347-10-M; 3348-10-M; 3349-10-M; 3350-10-M; 3351-10-M; 3352-10-M; 3353-10-M; 3354-10-M; 3355-10-M; 3356-10-M; 3357-10-M; 3358-10-M; 3359-10-M; 3360-10-M; 3361-10-M; 3362-10-M; 3363-10-M; 3364-10-M; 3365-10-M; 3366-10-M; 3367-10-M; 3368-10-M; 3369-10-M; 3370-10-M; 3371-10-M; 3372-10-M; 3373-10-M; 3374-10-M; 3375-10-M; 3377-10-M; 3378-10-M; 3379-10-M; 3380-10-M; 3381-10-M; 3382-10-M; 3383-10-M; 3384-10-M; 3385-10-M; 3387-10-M; 3388-10-M; 3389-10-M; 3390-10-M; 3391-10-M; 3392-10-M; UNITE HERE (Applicant) v. Workers United Ontario Council, Aramark Canada Ltd., Owens Corning Composite Materials Canada LP, American Eagle Outfitters Canada Corporation, Anewtex Inc., AOC Canada Inc., Aramark Rogers Centre Concessions, Aramark Toronto French School, Aramark Uniform Services Windsor, Aramark University of Toronto St. George Campus Aramark Upper Canada College, Behar Group Aramark York University, Beker Fashions Inc., Blue Bird Dress of Toronto Ltd., Bovie Manufacturing 564021 Ont. Inc., Braids & Laces Limited, Cambridge Towel Corporation, Canadian Niagara Hotels, Centre for Information and Community Services of Ontario, Coats & Clark Canada, Compass Cops Coliseum, Compass Gateway Postal Station, Compass London Health Sciences, Compass MTO, Compass Peterborough Health Services, Compass Vermont Square, Fabricushion Ltd., Filterfab Inc., Gordon Dress Inc., Holiday Inn Downtown Windsor, Hollander Canada Home Fashions, John Forsyth Company Inc., Kerry Canada Inc. Mississauga, Metro Sportswear Limited, Metzeler Automotive (now Henniges Automotive Schlegel Canada) P, NGF Canada Limited, Niagara 21st Group (Courtyard Marriott) International Automotive Components Inc. (Maple), Nordic Gaming Corporation (Fort Erie Racetrack), Obsessions Dress Designs Limited, Owens Corning Guelph Glass Plant, Rector Foods Ltd. (Kerry Canada), Remco Forwarding Ltd., Royal Shirt Company Ltd., Saint-Gobain Technical Fabrics Canada Ltd., Sodexo Bombardier, Sodexo Christie Gardens, Sodexo University of St. Michael's College, Sodexo University of Toronto Starbucks, St. Catharines Golf & Country Club, Stowe Woodward Company Limited, Surefit Home Furnishings, Windsor Textiles Limited, Winners (Schenker) (Respondent), Winners Merchants Int'l (*Endorsement Settlement*)

**3744-10-M:** Denis Rancourt (Applicant) v. University of Ottawa (Respondent) (*Dismissed*)

**3876-10-M:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. Jones Lang Lasalle Real Estate Services Inc. / Jones Lang Lasalle Services Immobiliers, Inc. (Respondent) (*Withdrawn*)

**3967-10-M:** Sheet Metal Workers' International Association, Local 51 (Applicant) v. Starcrest Homes Ltd., 2212057 Ontario Inc. (Respondent) (*Withdrawn*)

**4009-10-M:** United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Sobeys Vaughan Retail Support Centre (Respondent) (*Granted*)

**4065-10-M:** Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters (Applicant) v. Metrix Ready Mix Ltd. (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT**

**3922-10-M:** Weston Foods (Canada) Inc. (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) (*Granted*)

## **FINANCIAL STATEMENT**

**3939-10-M:** Mike Tapper (Applicant) v. Canadian Distribution Workers (Respondent) (*Dismissed*)

## **JURISDICTIONAL DISPUTES**

**2819-09-JD:** Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 2222 (Applicant) v. Hydro One Network Services, Skyway Canada Limited and, Labourers' International Union of North America, Local 1059 (Respondent) v. Electrical Power Systems Construction Association (Intervener) (*Granted*)

**2733-10-JD:** Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. H.C. Matcon Inc. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) (*Withdrawn*)

**2752-10-JD:** Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Varcon Construction Co. Ltd. and/or, Varcon Construction corporation (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) (*Withdrawn*)

## **COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT**

**0785-10-OH:** Tracy MacKenzie (Applicant) v. MGC Manufacturing II Inc (Respondent) (*Withdrawn*)

**1027-10-OH:** Darrell Riehl (Applicant) v. Advantage Waste Systems (Respondent) (*Dismissed*)

**2125-10-OH:** Monica Menner (Applicant) v. Peter Zinck and the Regional Municipality of Waterloo (Respondent) (*Withdrawn*)

**2524-10-OH:** Justin DeGordick and Randy Woolridge (Applicant) v. Future Shop (Best Buy Canada) Anthony Mmniti, Future Shop, St. Catharines Paul Deluca, Future Shop (Respondent) (*Withdrawn*)

**2966-10-OH:** Rick J. Arnold (Applicant) v. Royalcrest Paving & Contracting Ltd. (Respondent) (*Withdrawn*)

**3224-10-OH:** Amilita Pepperman (Applicant) v. Vincor International Inc. (Respondent) (*Withdrawn*)

**3417-10-OH:** Gary T.C. Joice (Applicant) v. Municipality of McDougall (Respondent) (*Withdrawn*)

**3428-10-OH:** Li Shao Sheng (Applicant) v. Visioneering Corp. and Renato Cipollone (Respondent) (*Dismissed*)

**3641-10-OH:** Matthew Boyd, Emily Ward (Applicant) v. 902707 Ontario Inc. carrying on business as Kelsey's Restaurant (Respondent) (*Dismissed*)

**3686-10-OH:** Gairy Brown (Applicant) v. 1126449 Ontario Incorporated o/a KD Farm Services KM Poultry (Respondent) (*Withdrawn*)

**3716-10-OH:** Julian Kalac, P.Eng. (Applicant) v. Voith Hydro Inc. (Respondent) (*Withdrawn*)

**3746-10-OH:** Norman Gadsby (Applicant) v. Marty Millionaire Ltd. (Respondent) (*Withdrawn*)

**3781-10-OH:** Donald Douglas Lyons (Applicant) v. Kiewit Infrastructure Group (Respondent) (*Withdrawn*)

## **COMPLAINTS UNDER THE ENVIRONMENTAL PROTECTION ACT**

**2288-10-EP:** Jean Claude Hebert (Applicant) v. The Corporation of the Township of Naim & Hyman (Respondent) (*Withdrawn*)

## **CONSTRUCTION INDUSTRY GRIEVANCES**

**1842-09-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Lafarge Canada Inc. and/or, Lafarge Paving & Construction Limited and, Coco Paving Inc. (Respondent) (*Withdrawn*)

**0314-10-G:** Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 1249762 Ontario Inc. o/a Mega City Tile (Respondent) (*Withdrawn*)

**1752-10-G:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Terminated*)

**1898-10-G:** Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. H.C. Matcon Inc. (Respondent) (*Withdrawn*)

**2110-10-G:** Ontario Council of the International Union of Painters and Allied Trades, District Council 46 (Applicant) v. Electrical Power Systems Construction Association and, Ontario Power Generation and, Plastacor Inc. (Respondent) (*Withdrawn*)

**2157-10-G:** International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Glencoe Insulation Co. Ltd. and, Glencoe Insulation 2000 Ltd. (Respondent) (*Granted*)

**2281-10-G:** Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Varcon Construction Co. Ltd. and/or, Varcon Construction Corporation (Respondent) (*Withdrawn*)

**2926-10-G:** International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Jenner Electric Limited (Respondent) (*Withdrawn*)

**3143-10-G:** International Brotherhood of Electrical Workers, Local 303 (Applicant) v. Weinmann Electric Ltd. (Respondent) (*Withdrawn*)

**3195-10-G:** The Electrical Trades Bargaining Agency of the Electrical Contractors Association of Ontario (the "ETBA") (Applicant) v. The IBEW Construction Council of Ontario and its affiliated Locals 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687 and 1739 (Respondent) (*Withdrawn*)

**3288-10-G:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Terminated*)

**3402-10-G:** Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Terminated*)

**3466-10-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Limen Masonry (2003) Inc. (Respondent) (*Withdrawn*)

**3511-10-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Limen Masonry (2003) Inc. (Respondent) (*Withdrawn*)

**3630-10-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dalmia Contracting Inc. (Respondent) (*Withdrawn*)

**3632-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Trifield Construction Company Ltd. (Respondent) (*Granted*)

**3706-10-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. P.L.S. Landscaping and Excavating Ltd. (Respondent) (*Terminated*)

**3799-10-G:** Sheet Metal Workers' International Association Local 473 (Applicant) v. Bruce Power LP (Respondent) (*Withdrawn*)

**3854-10-G:** Universal Workers Union Labourers' International Union of North America, Local 183 (Applicant) v. Totalsiteworks Incorporated (Respondent) (*Endorsement Settlement*)

**3908-10-G:** Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Inc. (Steward Cell Phone Usage) (Respondent) (*Withdrawn*)

**3914-10-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Edward Kosciuch c.o.b. as All City Drywall (Respondent) (*Granted*)

**3925-10-G:** International Union of Painters and Allied Trades, Local 1795 (Glaziers) (Applicant) v. AGC Flat Glass North America Ltd. (Respondent) (*Withdrawn*)

**3932-10-G:** International Brotherhood of Painters and Allied Trades, Local 557 (Applicant) v. Peerless Finishing Contractors Ltd. (Respondent) (*Granted*)

**3943-10-G:** International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Pro Glass Services Inc. (Respondent) (*Granted*)

**3952-10-G:** Carpenters District Council of Ontario, Local 2041 (Applicant) v. Acoustiques SM (2100943 Ontario Inc.) (Respondent) (*Withdrawn*)

**3971-10-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 700 (Applicant) v. Maple Industries Inc. (Respondent) (*Granted*)

**3973-10-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Arone Paving & Concrete Ltd. (Respondent) (*Granted*)

**3974-10-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Arone Paving & Concrete Ltd. (Respondent) *(Granted)*

**4016-10-G:** Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Duron Ontario Ltd. (Respondent) *(Withdrawn)*

**4068-10-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Aecon Group Inc. (Respondent) *(Withdrawn)*

**4069-10-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Chislett Asphalt Roofing Ltd. (Respondent) *(Withdrawn)*

**4071-10-G:** The International Union of Painters and Allied Trades, Local Union 1494 (Applicant) v. 426968 Ontario Limited o/a Air-O Systems (Respondent) *(Granted)*

**4078-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Environmental Solutions Inc. (Respondent) *(Granted)*

**4138-10-G:** International Union of Operating Engineers, Local 793 Ltd. (Applicant) v. Jones Group Ltd. (Respondent) *(Granted)*

**4152-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Concord Earthmoving Limited (Respondent) *(Granted)*

**4171-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Metro Hoisting & Erecting Ltd. (Respondent) *(Granted)*

**4179-10-G:** The International Union of Painters and Allied Trades, (Applicant) v. Painting & More Inc. (Respondent) *(Granted)*

**4185-10-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Semple-Gooder Roofing Limited (Respondent) *(Withdrawn)*

**4192-10-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Metro Drywall Contracting Ltd. (Respondent) *(Granted)*

**4200-10-G:** United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. EllisDon Corporation (Respondent) *(Withdrawn)*

## APPLICATIONS FOR ACCREDITATION

**2459-10-R:** Electrical Contractors Association of Central Ontario (Applicant) v. International Brotherhood of Electrical Workers, Local 804 (Respondent) *(Granted)*

## APPEALS EMPLOYMENT STANDARDS ACT

**2984-08-ES:** Dorsy Asplund, a Director of SMK Speedy International Inc. (Applicant) v. Gary Allen, Mary Jane Allen, Sara Allen, Bryan Anderson, Augusto Antao, David Armstrong, Stanislaw Bedorf, Brent Boston, Pamela Boutilier, Benny Brilliant, David Brooks, Mark Callow, Milton Carter, Judy Chan, Paul Christodoulou, Tracy Cole, Kent Coleman, Michael Connors, Maria Coppola, Mark Vandenberg, Cameron Dahl, Courtland Davis, Cesar Deleon, Matthew Dick, Joseph Dodds, Paul Dolhai, Scott Dunn, Tim Evans, Donny Foley, Carol Foster, Gino Gasparro, Hubert Gregory, Arthur Heikkila, Barry Hitchen, Jim Husser, Mary Jackson, Stephen J. Jackson, Brent Johnson, Darrell Jones, Matin Kashmiri, Normand Kingsbury, Cheri Kippers, Fred Korczynski, Michael Kucharczyk, William Laforme, Rick Lanthier, Dale Larlee, Denis Larmand, Tajram Lauhar, Mike Lipka, Remedios Mancinelli,

Peter Marinelli, Tim McGrath, Gerald McQuinn, Chris Medeiros, David Middleton, Samuel Miles, Lisa Miller, Ralph Moises, Gregory Morrison, Norma Nazareth, Richard Newell, Calvin Nicholson, Ken Norris, Bernie Payne, Diane Peters, Stewart Rainey, Vijay Rajput, James Roberts, Juan Rosa, Randy Rowden, George Ryan, Gino Schembri, Steven Scott, Lalta Seebalack, Dale Seguin, Donald Kingsbury, Stuart Seymour, Bejainauth Sheobilas, Ramnarace Surjoo, Margaret S. Szabo-Thomas, Garnet Tavares, Rick Theriault, Jerry Toth, Darryl Trainer, George Tsang, Ben Vandenberg, Barbara Ward, Mark L. Ward, Terry West, Herman Williams, Robert Williams, Marcelle Woodbine, Wayne Woods, Yuon Chan Yang, Janusz Zaremba, Defang Zhu and, Director of Employment Standards (Respondent) v. Speedy Corporation, Forum Leasehold Partners Inc. (Intervener) (*Granted*)

**2945-09-ES:** Maria Derkach (Applicant) v. 994741 Ontario Inc. o/a Classic Exteriors Ontario and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2965-09-ES:** Grenville Castings (2007) Limited (Applicant) v. Stephen Holmgren and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3587-09-ES:** Aspen Valley Wildlife Sanctuary (Applicant) v. Ryan White and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3588-09-ES:** Aspen Valley Wildlife Sanctuary (Applicant) v. Benjamin Cox and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3589-09-ES:** Aspen Valley Wildlife Sanctuary (Applicant) v. Janet Longhurst and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3591-09-ES:** Aspen Valley Wildlife Sanctuary (Applicant) v. Anna von Hollander and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3613-09-ES:** Ryan White (Applicant) v. Aspen Valley Wildlife Sanctuary (Rosseau) and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3614-09-ES:** Else Poulsen (Applicant) v. Aspen Valley Wildlife Sanctuary (Rosseau) and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3616-09-ES:** Anna von Hollander (Applicant) v. Aspen Valley Wildlife Sanctuary (Rosseau) and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3617-09-ES:** Janet Longhurst (Applicant) v. Aspen Valley Wildlife Sanctuary (Rosseau) and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3618-09-ES:** Benjamin Cox (Applicant) v. Aspen Valley Wildlife Sanctuary (Rosseau) and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3887-09-ES:** Devraj Dhoot (Applicant) v. Grohe Canada Inc. and, Director of Employment Standards (Respondent) (*Withdrawn*)

**0861-10-ES:** Sergio Basilone (Applicant) v. ComXel TO Inc. and, Director of Employment Standards (Respondent) (*Withdrawn*)

**1235-10-ES:** Cancable Inc. c.o.b. as Dependable Hometech (Applicant) v. Feliciano Nora and, Director of Employment Standards (Respondent) (*Granted*)

**1502-10-ES:** Paul Cloutier director of Oceanlake Commerce Inc. (Applicant) v. Peter Arblaster, Bernard Tigno, Octavian Pop, Deanna Bastin, Alec M. G. Nickalls, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1503-10-ES:** Edward DeSousa director of Oceanlake Commerce Inc. (Applicant) v. Peter Arblaster, Bernard Tigno, Octavian Pop, Deanna Bastin, Alec M. G. Nickalls, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1504-10-ES:** William Car director of Oceanlake Commerce Inc. (Applicant) v. Peter Arblaster, Bernard Tigno, Octavian Pop, Deanna Bastin, Alec M. G. Nickalls, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1745-10-ES:** Northern Industrial Uniform Services Inc. (Applicant) v. Donna Leslie and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1749-10-ES:** TMrl Logistics Inc. (Applicant) v. John Timmings and, Director of Employment Standards (Respondent) (*Withdrawn*)

**1826-10-ES:** Enterprises Marian Richard Inc./Marian Richard Enterprises Inc. o/a Canadian Tire (Applicant) v. Linda Vandenberg and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1835-10-ES:** Leanne Butwell (Applicant) v. ECS Electrical Cable Supply Ltd., Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1881-10-ES:** Leslie S. Ray (Applicant) v. Pride of Muskoka Marine Limited and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1899-10-ES:** Jenlea Inc. (Applicant) v. Cathy Li and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**1907-10-ES:** Alaeldin Abiad o/a Royalty Enterprises (Applicant) v. Delmor Burton and, Director of Employment Standards (Respondent) (*Granted*)

**1924-10-ES:** Yuan Shan (Applicant) v. JNG Recruiting Centres, Director of Employment Standards (Respondent) (*Withdrawn*)

**2032-10-ES:** Howard Cohen (Applicant) v. Cameron Steel Inc. and, Director of Employment Standards (Respondent) (*Withdrawn*)

**2055-10-ES:** Franco Palladini, a Director of Estate #31-456514 Al Paladini's Pine Tree Ford Lincoln Limited (Applicant) v. Clarence Best, Joya Bifulchi, Egon Blake, Robert Bolsover, Jeffrey Bowen, Diana Bucciarelli, Shelley Burns, David Burton, Helio Canha, Thomas Cheslea, Franco Colabufalo, Donald Calquhoun, Dominic Comisso, Alvin W. Coy, Salvatore Cuzzaniti, Natalie D'Alessandro, Stefania D'Alessandro, Paul De Varano, Robert Dennis, Claudio Di Pede, Rocco Di Pietrantonio, Diana Di Varano, Daniel Dicarolo, Antonio Disanto, Douglas Ellis, Darryl J. Fic, Philip Ficara, Afrodity Graham, Dominic Grossi, Bing Ching Ho, Danny Jaggon, Melanie Lamer, Amelia Leone, Robert Makino, Manuel Marfetan, Samantha Martins, Douglas E. Mason, Richard Matos, Peter Nichoff, Franco Palladini, Peter Palladini, Catherine Palumbo, Theresa Palumbo, Ezio Parolari, David S. Peever, Ryan Persaud, John Poce, Bruno Policicchio, Susan Pompilio-Mcfarlane, Wendy Rae, Maxime Rebboh, Sharron Rennie, Daniel W. Robb, Angelo Romeo, Ross Salamome, Armando Sanita, Giuseppe Schembri, Michael Simpson, Ronald Simpson, Peter Tino, Perry Tonus, Nadia Vella, Ludovico Vivona, Linda Zampini and, Director of Employment Standards (Respondent) (*Terminated*)

**2077-10-ES:** David Gaertner (Applicant) v. Pneutech-Rousseau Inc. and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2092-10-ES:** Commercial Spring and Tool Company Limited (Applicant) v. Sunny Muttathukunnel Thomas and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2347-10-ES:** Dymaxium Inc. (Applicant) v. Ryan Kwan and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2394-10-ES:** Steven A. Corbeil a Director of Fresh First Produce Inc. (Applicant) v. Natalia E. Lindo Acuna and, Yana Udovychenko and, Director of Employment Standards (Respondent) (*Granted*)

**2466-10-ES:** New Directions Aromatics Inc. (Applicant) v. Mark Catalli and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2495-10-ES:** Teresa Antidormi (Applicant) v. Finding The Way Special Needs Learning Centre and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2553-10-ES:** Elizabeth Devera (Applicant) v. Expeditors Canada Inc. and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2639-10-ES:** Co-Up Towing Services Ltd. (Applicant) v. Robert Mootoo and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2652-10-ES:** Andrew Gebbie operating as UK Masonry (Applicant) v. Martinus Verkruisen and, Director of Employment Standards (Respondent) (*Granted*)

**2663-10-ES:** Maria Derkach (Applicant) v. Extendicare (Canada) Inc., Director of Employment Standards (Respondent) (*Dismissed*)

**2668-10-ES:** Longo Brothers Fruit Markets Inc. o/a Longos Fruit Markets (Applicant) v. Robert Ottogalli, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2673-10-ES:** Merse Motor Electric Ltd. (Applicant) v. Dominic Pizzi and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2707-10-ES:** Mukesh Gupta (Applicant) v. Advantage Restaurant Supply Inc. and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2734-10-ES:** A.C. Renovations & Restorations Inc. (Applicant) v. Peter Oliveira, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2769-10-ES:** 2155091 Ontario Ltd. o/a Rockford's Bar and Grill (Applicant) v. Robert Billingsley and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2798-10-ES:** Canadian Medical Response Inc. o/a Canadian Medical Response (Applicant) v. Jeff A. Warrack and, Director of Employment Standards (Respondent) (*Dismissed*)

**2799-10-ES:** Canadian Medical Response Inc. o/a Canadian Medical Response (Applicant) v. Marinette Cajayon and, Director of Employment Standards (Respondent) (*Dismissed*)

**2820-10-ES:** Watertight Roofing Services Limited (Applicant) v. David Corcoran, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2853-10-ES:** Dixon Commercial Investigators (1982) Inc. (Applicant) v. Heather Michaud and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2871-10-ES:** Arodal Services (Ontario) Limited (Applicant) v. Julio Molina and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2883-10-ES:** Steffani Theodorou and James Prosser, directors of Metro Refrigeration Corporation (Applicant) v. Satyanand Santokhi and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2929-10-ES:** Manuel Lima (Applicant) v. Faurecia Automotive Seating Canada Ltd., Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**2947-10-ES:** Da Vinci Centre (Applicant) v. Carmine Ciccone and, Director of Employment Standards (Respondent) (*Terminated*)

**2978-10-ES:** The Everyday Musician House of Music Education (Applicant) v. Chris Aikins and, Director of Employment Standards (Respondent) (*Dismissed*)

**2985-10-ES:** 1412725 Ontario Ltd. o/a Macs Milk (Applicant) v. Ray Najjar and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3021-10-ES:** Lincoln Paving and Contracting Ltd. (Applicant) v. Johnathon Bowker and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3027-10-ES:** Five Star Paving (Cambridge) Inc. (Applicant) v. Kevin Gardner, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3034-10-ES:** Just Energy Corp. (Applicant) v. Ashley Loitsch and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3039-10-ES:** Guy Green (Applicant) v. Keystone Automotive Industries ON Inc., Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3042-10-ES:** Post Road Health & Diet Inc. (Applicant) v. Renee S. Cain and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3052-10-ES:** Douglas Plant operating as Bytown Beauty Supply (Applicant) v. Julie Hutt and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3058-10-ES:** Jun Yang (Applicant) v. Citigroup Fund Services Canada, Inc., Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3086-10-ES:** Padmini Nejloveanu (Applicant) v. Terence Wong Drugs Ltd./Shoppers Drug Mart and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3088-10-ES:** Dennis Hildbrand, A Director of Telantek Global Telecom Corp (Applicant) v. Mike (Michael) Stachejczuk and, Director of Employment Standards (Respondent) (*Dismissed*)

**3089-10-ES:** Jim Bagshaw, a Director of Telantek Global Corp (Applicant) v. Mike (Michael) Stachejczuk and, Director of Employment Standards (Respondent) (*Dismissed*)

**3098-10-ES:** United Restorations Co. (Applicant) v. Andrew Kurouwski and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3120-10-ES:** Joyce Cameron o/a Harmony Hills Stable (Applicant) v. Martine Thomas and, Director of Employment Standards (Respondent) (*Terminated*)

**3122-10-ES:** Nedeljko Gacic (Applicant) v. Dma Marie Groh o/a JBJ Trucking and, Director of Employment Standards (Respondent) (*Withdrawn*)

**3128-10-ES:** James Francisco Pinto Rangel (Applicant) v. Matrix Framing Enterprises Inc. and, Director of Employment Standards (Respondent) (*Terminated*)

**3137-10-ES:** Kevin Gardner (Applicant) v. Five Star Paving (Cambridge) Inc., Director of Employment Standards (Respondent) (*Withdrawn*)

**3138-10-ES:** Bassam Taha o/a Dorwin One Inc. (Applicant) v. Paul Spicer and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3139-10-ES:** Bassam Taha o/a Dorwin One Inc. (Applicant) v. Anna Howard and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3140-10-ES:** Bassam Taha o/a Dorwin One Inc. (Applicant) v. Tiffany Thornton and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3154-10-ES:** Alan S. Young (Applicant) v. Collin Electric Service (1979) Ltd., Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3156-10-ES:** Atlantic Packaging Products Ltd. (Applicant) v. Cecilia Massaquoi, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3157-10-ES:** Stitch It Canada's Tailor Inc. (Applicant) v. Agnes Onodi and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3158-10-ES:** Virsare Inc. (Applicant) v. Jeremy Gowan and, Director of Employment Standards (Respondent) (*Terminated*)

**3159-10-ES:** Fortress Technology Inc. (Applicant) v. Filson Huerta, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3162-10-ES:** Teresa's Restaurant 0/b 1800146 Ontario Ltd. (Applicant) v. Giovanni Garcia and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3165-10-ES:** Gifted Hands (2002) Ltd. operating as Gags N' Giggles (Applicant) v. Atiya Raja, Director Of Employment Standards (Respondent) (*Endorsement Settlement*)

**3176-10-ES:** Laura Byng (Applicant) v. Maritz Canada Inc., and Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3178-10-ES:** 2162394 Ontario inc. Hot Breads Bakery & Cafe (Applicant) v. Amanda Carvalho, and Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3185-10-ES:** Paul Davis Systems of Thunder Bay (Applicant) v. Doug Johnson, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3226-10-ES:** Dr. Bernstein Diet Clinics Ltd. (Applicant) v. Farzana Allibhai, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3255-10-ES:** Miratel Solutions Inc. (Applicant) v. Karla Simon, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3259-10-ES:** SMTC Manufacturing Corporation of Canada (Applicant) v. Claudette Banks and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3297-10-ES:** 1794597 Ontario Inc. Operating as Stone Works Canada (Applicant) v. Leszek Szydlowski and, Director of Employment Standards (Respondent) (*Terminated*)

**3306-10-ES:** Giving Smile Inc. (Applicant) v. Zhuohuan Yu and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3307-10-ES:** Kevin Franklin Operating as Town and Country Gardens (Applicant) v. Kyle Marlowe and, Director of Employment Standards (Respondent) (*Dismissed*)

**3322-10-ES:** 1804617 Ontario Inc. o/a Sun Vision Tanning Salon (Applicant) v. Angela Solland and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3331-10-ES:** 1641633 Ontario Inc. o/a Wimpy's Diner (Applicant) v. Aggie Potemski and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3405-10-ES:** Melmart Distributors Inc. (Applicant) v. Mr. David Anthony, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3406-10-ES:** Mr. David Anthony (Applicant) v. Melmart Distributors Inc., Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3416-10-ES:** Baird Moving Inc. (Applicant) v. Mike Mann and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3420-10-ES:** 2009915 Ontario Inc. o/a Orchard Beach Lakefront Bar & Grill (Applicant) v. Leah Fildey and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3422-10-ES:** 2009915 Ontario Inc. o/a Orchard Beach Lakefront Bar & Grill (Applicant) v. Cassandra Poley and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3423-10-ES:** Maria C. Stocchetti (Applicant) v. Magna Exteriors and Interiors Corp. o/a Mytox Manufacturing, and Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3432-10-ES:** Williams Marijan + Associates Inc (Applicant) v. D. Christopher White, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3469-10-ES:** Cassandra Ashley Galloway o/a Cassandra Galloway Enterprise o/a College Pro Painting (Applicant) v. Michael Fisher and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3470-10-ES:** Cassandra Ashley Galloway o/a Cassandra Galloway Enterprise o/a College Pro Painting (Applicant) v. Chelsey Tremblay and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3480-10-ES:** 2081597 Ontario Inc. o/a Omex Office Maintenance Experts (Applicant) v. David Brown, and Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3481-10-ES:** Ottawa Valley Kitchens Ltd. (Applicant) v. Monica Strong and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3485-10-ES:** Mary Ann A. Catindig (Applicant) v. Labour Sponsored Community Development Group (Windsor and Essex) Inc. and, Director of Employment Standards (Respondent) (*Endorsement Settlement*)

**3504-10-ES:** Geoffrey Fitzpatrick (Applicant) v. Ultimate Utility Works Inc., and Director of Employment Standards (Respondent) *(Terminated)*

**3522-10-ES:** Twiinz Hospitality Inc. o/a Crabby Joe's Tap and Grill (Applicant) v. Thomas Tenhove, and Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3532-10-ES:** Charles Wrock o/a Wrock & Associates (Applicant) v. Charlene Dickie and, Director of Employment Standards (Respondent) *(Terminated)*

**3534-10-ES:** Avante Security Inc. (Applicant) v. Daniel Rousseau and, Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3535-10-ES:** 1698020 Ontario Inc. o/a Subway (Applicant) v. Shanjida Rashid and, Marvia Jones and, Director of Employment Standards (Respondent) *(Terminated)*

**3537-10-ES:** Kenneth Roger Blair (Applicant) v. GP Construction Corp, Director of Employment Standards (Respondent) *(Withdrawn)*

**3546-10-ES:** Future Contractors Group Inc. (Applicant) v. Anand Singh and, Director of Employment Standards (Respondent) *(Terminated)*

**3553-10-ES:** Mahalah Sherah M. Rara (Applicant) v. Multi Handbags Inc. and, Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3566-10-ES:** Heartland Food Corp of Canada (Applicant) v. Randy Fallis and, Director of Employment Standards (Respondent) *(Terminated)*

**3570-10-ES:** Elgin Precise Landscape Ltd. o/a Sunrise Small Engine (Applicant) v. Tim Miettinen, and Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3616-10-ES:** Jolanta Szajek (Applicant) v. The Lord Chancellor Pub Corporation The Musket Restaurant and, Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3633-10-ES:** Maren Fine (Applicant) v. The Peterborough Family Y.M.C.A. and, Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3639-10-ES:** Texts Center Inc. (Applicant) v. Himanshu Desai and, Director of Employment Standards (Respondent) *(Terminated)*

**3645-10-ES:** OZ Optics Limited (Applicant) v. David Pakyuz and, Director of Employment Standards (Respondent) *(Terminated)*

**3674-10-ES:** Agape Homes Realty Inc./2072097 Ontario Inc. operating as Howard Johnson Trenton (Applicant) v. Cinthia C. Escobar, Director of Employment Standards (Respondent) *(Terminated)*

**3677-10-ES:** Peninsula Security Services Ltd. (Applicant) v. Stephen J. Bettle and, Director of Employment Standards (Respondent) *(Terminated)*

**3689-10-ES:** Mossco Esso (Applicant) v. Jennifer Blackmore, Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3713-10-ES:** Heinrich Wiebe (Applicant) v. W. Martens' Greenhouses Inc. and, Director of Employment Standards (Respondent) *(Withdrawn)*

**3719-10-ES:** Husky Rent-A-Car Inc. o/a Husky Rent A Car and U-Haul (Applicant) v. Hong Ju Yang, and Director of Employment Standards (Respondent) *(Terminated)*

**3723-10-ES:** Chelsea Stevenson (Applicant) v. Results Generation Group Inc., and Director of Employment Standards (Respondent) *(Terminated)*

**3745-10-ES:** Francesco P.F. Parise (Applicant) v. 4536631 Canada Inc. o/a Rona Home & Garden Centre and, Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3747-10-ES:** Sanpaul Investments Limited o/a Walking on a Cloud (Applicant) v. Iain Haggarty, and Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3813-10-ES:** Amos Schwarzbarg (Applicant) v. Don Valley North Automotive Inc. o/a Don Valley North Toyota, Director of Employment Standards (Respondent) *(Endorsement Settlement)*

**3923-10-ES:** Frank J. Parvanyik (Applicant) v. 1622024 Ontario Ltd. o/a KIA of Hamilton (Respondent) *(Terminated)*

**3924-10-ES:** B.G. Schickedanz (York) Inc. c.o.b. as The Royal Canadian Riding Academy (Applicant) v. Peter Hick and, Director of Employment Standards (Respondent) *(Terminated)*

**3949-10-ES:** Du Hong Khang (Applicant) v. Carmen's Inc. o/a Carmen's Fine Foods Limited and, Director of Employment Standards (Respondent) *(Dismissed)*

**3959-10-ES:** Alda Management Services Ltd (Applicant) v. James Barnes, Director of Employment Standards (Respondent) *(Terminated)*

**3960-10-ES:** Christopher A. Pardiak (Applicant) v. Take Us For Granite Ontario Ltd. and, Director of Employment Standards (Respondent) *(Terminated)*

**3979-10-ES:** Benson Group Inc. (Applicant) v. Grant Wake and, Director of Employment Standards (Respondent) *(Dismissed)*

**4061-10-ES:** Ineke Sutherland o/a Designworks International Limited (Applicant) v. Dylan Roberts and, Director of Employment Standards (Respondent) *(Dismissed)*

**4115-10-ES:** Rozbeh Rashidpour (Applicant) v. Hakim Optical Laboratory Limited and, Director of Employment Standards (Respondent) *(Terminated)*

**4223-10-ES:** Perly Kay Grant (Applicant) v. Richard and Nathalie Wachsberg and, Director of Employment Standards (Respondent) *(Terminated)*

**4305-10-ES:** Jay Rodrigues o/a on the Level Multi-Service Contracting (Applicant) v. Steven Paul Inman and, Director of Employment Standards (Respondent) *(Terminated)*

## **APPEALS . OCCUPATIONAL HEALTH AND SAFETY ACT**

**0937-08-HS:** SNC-Lavalin ProFac Inc. (Applicant) v. DEL Bridge Contracting Limited and, Stracor Inc. and, Antrim Mechanical Ltd. and, Christopher Gazdik, Inspector (Respondent) *(Dismissed)*

**1237-08-HS:** Hydro One Networks Inc. (Applicant) v. Canadian Union of Skilled Workers and, Daniel Taillefer, Inspector (Respondent) v. Power Workers' Union, CUPE Local 1000 .C.L.C. (Intervener) *(Withdrawn)*

**2903-09-HS:** Fanshawe College of Applied Arts and Technology (Applicant) v. OPSEU, Local 109, OPSEU, Local 110 and, Christopher Callaghan, Inspector (Respondent) (*Granted*)

**2906-09-HS:** Fanshawe College of Applied Arts and Technology (Applicant) v. OPSEU, Local 109, OPSEU, Local 110 and, Christopher Callaghan, Inspector (Respondent) (*Granted*)

**3117-10-HS:** District School Board of Niagara (Applicant) v. CUPE, Local 4156 and, Gregory Rock, Inspector (Respondent) (*Withdrawn*)

**3182-10-HS:** Goodwill Industries of Toronto (Applicant) v. Teamster Local 847, Steven Briscoe, Inspector (Respondent) (*Withdrawn*)

**4102-10-HS:** Dollarama L.P. (Applicant) v. Ryan C. Weaver and, Patricia Szobczuk, Inspector (Respondent) (*Terminated*)

**4103-10-HS:** Dollarama L.P. (Applicant) v. Ryan C. Weaver and, Patricia Szobczuk, Inspector (Respondent) (*Terminated*)

## **APPLICATION UNDER THE AMBULANCE SERVICES COLLECTIVE BARGAINING ACT**

**3079-10-M:** The Corporation of the County of Frontenac (Applicant) v. Ontario Public Service Employees Union and its Local 462 (Respondent) (*Terminated*)

## **CECBA EMPLOYEE STATUS**

**3516-10-M:** Canada Employment and Immigration Union (Applicant) v. Canadian Office and Professional Employees Local 225 (Respondent) (*Terminated*)

## **FIRST AGREEMENT DIRECTION**

**3728-10-FC:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Aaroprt Limousine Services Ltd. McIntosh Limousine Service Ltd. and Aircab Limousine Services (1985) LTD. (Respondent) (*Dismissed*)

**3790-10-FC:** International Union of Operating Engineers, Local 793 (Applicant) v. Roni Excavating Limited and/or, 865217 Ontario Inc. O/a Iron Excavating and Grading and/or, Niro Bros. Excavating & Grading Inc. and/or, Iron Trio Inc. and/or, Orin Landscaping Inc. (Respondent) (*Granted*)

## **PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997**

**2192-10-PS:** Ontario Nurses' Association (Applicant) v. James Bay General Hospital and, Weeneebayko Health Ahtuskaywin and, Weeneebayko Area Health Authority (Respondent) v. Public Service Alliance of Canada, Professional Institute of the Public Service of Canada (Intervener) (*Granted*)

Unit: "All registered nurses and nurses with temporary certificates of registration engaged in a nursing capacity save and except supervisors and persons above the rank of supervisors." employees in unit)

Number of persons on voters' list at start of vote	82
Number of persons who voted	62
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	56

Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots segregated and not counted	0

## REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

**2839-09-M:** Workers United Ontario Council (Applicant) v. NGF Canada Limited (Respondent) (*Granted*)

## REFERRAL FROM MINISTER (SECTION 115 FORMERLY SECT 109)

**2260-09-M:** Unite Here (Applicant) v. Workers United Ontario Council, Niagara 21st Group Inc. c.o.b. as the Courtyard by Marriott (Respondent) (*Granted*)

**2285-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and, Sure Fit Home Furnishings Ltd. (Respondent) (*Granted*)

**2286-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and, Xerox Canada Ltd. National Logistics Centre (Respondent) (*Granted*)

**2425-09-M:** Workers United Ontario Council (Applicant) v. Toronto Dress & Sportswear Manufacturers' Guild Inc. for Beker Fashions Inc. (Respondent) (*Granted*)

**2426-09-M:** Workers United Ontario Council (Applicant) v. Toronto Dress & Sportswear Manufacturers' Guild Inc. for Obsessions Dress Design Ltd. (Respondent) (*Granted*)

**2427-09-M:** Workers United Ontario Council (Applicant) v. Toronto Dress & Sportswear Manufacturers' Guild Inc. for Gordon Dress Inc. (Respondent) (*Granted*)

**2428-09-M:** Workers United Ontario Council (Applicant) v. Toronto Dress & Sportswear Manufacturers' Guild Inc. for Blue Bird Dress of Toronto (Respondent) (*Granted*)

**2429-09-M:** Unite Here Local 75 (Applicant) v. Workers United Ontario Council, Choice Nutritional Food Services Inc. (Respondent) (*Granted*)

**2444-09-M:** Workers United Ontario Council (Applicant) v. Compass Group Canada Ltd. Canada Post Corporation Gateway Plant (Respondent) (*Granted*)

**2574-09-M:** UNITE HERE (Applicant) v. Workers United (Mississauga) (Respondent) (*Granted*)

**2575-09-M:** UNITE HERE (Applicant) v. Workers United (Respondent) (*Granted*)

**2576-09-M:** UNITE HERE (Applicant) v. Workers United Company Limited (Cambridge) (Respondent) (*Granted*)

**2577-09-M:** UNITE HERE (Applicant) v. Workers United (Canada) Inc. (Respondent) (*Granted*)

**2578-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Kerry (Canada) Inc. (formerly Rector Foods Limited), Respondent (*Granted*)

**2579-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Kerry (Canada) Inc. (Mississauga), Respondent (*Granted*)

**2583-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Nordic Gaming Corporation, Respondent (*Granted*)

**2588-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Choice Nutritional Food Services Inc., Respondent (*Granted*)

**2589-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Behar Cline Manufacturing Ltd., Respondent (*Granted*)

**2590-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Riviera Inc., (Respondent) (*Granted*)

**2591-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Giovanni Caboto Club, (Respondent) (*Granted*)

**2598-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Coats and Clark Canada, (Respondent) (*Granted*)

**2599-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and Woodgreen Community Services, Respondent (*Granted*)

**2600-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and, Manufacturers Association/Mallia Fashions Limited (Respondent) (*Granted*)

**2602-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and, Anewtex (Respondent) (*Granted*)

**2604-09-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and, Windsor Textile Limited (Respondent) (*Granted*)

**2404-10-M:** UNITE HERE (Applicant) v. Workers United Ontario Council and, Fort Erie Live Racing Consortium (successor to Nordic Gaming Corporation) (Respondent) (*Granted*)

**2844-10-M:** Ontario Public Service Employees Union (Applicant) v. Oshawa Durham Rape Crisis Centre (Respondent) (*Terminated*)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**2454-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Trifield Construction Company Ltd. (Respondent) (*Dismissed*)

**2481-10-M:** Elementary Teachers' Federation of Ontario (Applicant) v. District School Board of Niagara (Respondent) v. Canadian Union of Public Employees and its Local 4156 (Intervener) (*Dismissed*)

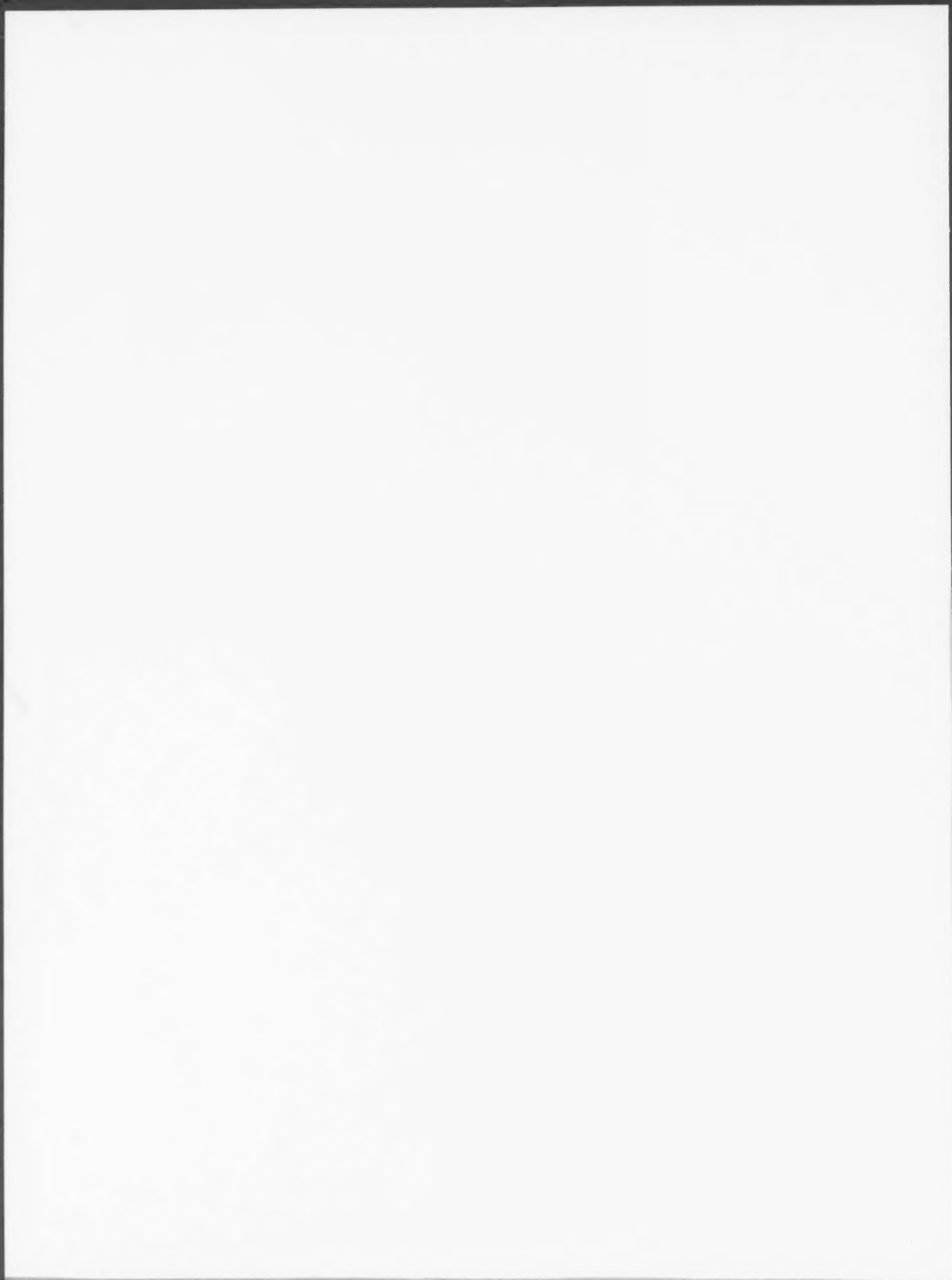
**2859-10-ES:** Federal Security Agency Corporation (Applicant) v. Thivakaramoorthy Kathiravelu and, Director of Employment Standards (Respondent) (*Dismissed*)

**3434-10-ES:** Alexander Litvak (Applicant) v. Nexus Protective Services Ltd., Director of Employment Standards (Respondent) (*Dismissed*)

**3491-10-U:** Keshodot Kumar (Applicant) v. Ontario English Catholic Teachers' Association (Respondent) v. Toronto Catholic District School Board (Intervener) (*Dismissed*)

**3645-10-ES:** OZ Optics Limited (Applicant) v. David Pakyuz and, Director of Employment Standards (Respondent) (*Dismissed*)

**3962-10-R:** The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Can-Sky Roofing & Sheet Metal Inc. (Respondent) v. Sheet Metal Workers' International Association Local 30 (Intervener) (*Granted*)



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M5G 2P1*

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